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ABSTRACT

This report is an extensive review of the topic of child abuse as it pertains to American Indians, with particular reference to resources available from the Clearinghouse on Child Abuse and Neglect Information. Chapter I offers historical background on the effects of governmental policies upon Indian communities. Chapter II reviews tribal court systems, codes and provisions relating to child abuse and neglect. Chapter III looks at the Indian Child Welfare Act (ICWA), which increased tribal jurisdiction over the care and protection of Indian children. Chapter IV studies ways in which tribal programs might develop within and beyond the jurisdiction of the ICWA. Chapter V seeks to show how services based upon understanding of Indian family life and culture more effectively alleviate child maltreatment. Chapter VI lists current programs that addressed child protection for American Indians. Chapter VII is a directory of resources to consult for more information. Each chapter concludes with a bibliographic reference to materials cited therein. (TES)

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Special Report: Protection of Native American Children From Abuse and Neglect

Native Americans and Child Maltreatment: The Past, Present, and the Future

November 1986

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SPECIAL REPORT: PROTECTION OF NATIVE AMERICAN CHILDREN FROM ABUSE AND NEGLECT

Native Americans and Child Maltreatment: The Past, Present, and the Future

Lucy Alf Younes
November 1986

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TABLE OF CONTENTS

INTRODUCTION: The Protection of Native American Children from Abuse and Neglect 1

The Maltreatment of Native American Children: Why This Topic Merits Special Consideration 1

Purpose of This Report 2

Background and History of Native American Law and Sociopolitical Systems 4

CHAPTER I: HISTORICAL DEVELOPMENT OF LAW AND POLICY: THE RELATIONSHIP BETWEEN INDIAN AND FEDERAL/STATE GOVERNMENTS 7

- Questions of Jurisdiction 7
- Early Milestones in Federal/Tribal Jurisdictional Development 7
- Public Law 280 and the Termination Policy 8
- Self-Determination 9

Child Protective and Other Services for Native Americans: Historical Antecedents 11

Chapter I: Bibliography 13

CHAPTER II: NATIVE AMERICAN TRIBAL CODES AND LEGAL SYSTEMS..... 15

Native American Jurisprudence 15
- Comparisons of Tribal Codes 16
- Code Collections 20
- Analysis of Tribal Code Child Abuse and Neglect Provisions 22

Tribal Courts and Legal Systems 24

Resources for Tribal Legal Systems Development 27
- Model Codes and Other Drafting Aids 27
- Resources for Court Staff Training 27

Chapter II: Bibliography 29

CHAPTER III: THE INDIAN CHILD WELFARE ACT (ICWA) 31

Background 31

Review and Judicial Interpretations of the ICWA 33
Legislative Intent 33
Applicability 33
Purpose of the ICWA 36
Jurisdiction under the ICWA 36
Rights of the Parties in Proceedings under the ICWA 37
Voluntary Proceedings and Consent Issues 39
Placement Preferences 39

Impact of the ICWA 40

Implementation of the ICWA 41
Issues for Implementation 41
Resources for Implementation 42

Chapter III: Bibliography 43

CHAPTER IV: BEYOND THE ICWA: OTHER FEDERAL AND STATE LAWS AND POLICIES CONCERNING THE PROTECTIVE SERVICES FOR NATIVE AMERICAN CHILDREN 45

Federal Laws, Programs, and Policies 45
Background 45

Present Federal Programs for Native Americans 46
Child Protective Service Delivery 46
The Future of Federal Policy Concerning Native American Child Maltreatment 48

State Laws and Systems Affecting Native American Children 50
State Laws 50
State Indian Child Welfare Acts 52
Tribal/State Agreements 52

Chapter IV: Bibliography 53

CHAPTER V: RESOURCES FOR WORKING WITH NATIVE AMERICAN CHILDREN AND FAMILIES 55

General References for Understanding Child Maltreatment Among Native Americans 55
Incidence and Prevalence 55

Special Issues 56
Urbanization 56
Institutional Abuse 57

References for Service Providers 58
Practice in Minority Communities 58
Social Work 58
Working with Native Americans 58
Training Materials for Service Providers 59

References for Native American Communities' Child Welfare and Protection Programs 61

Chapter V: Bibliography 66

CHAPTER VI: PROGRAMS FOR NATIVE AMERICAN FAMILIES AND CHILDREN 69

Tribal/Indian Community Social or Child Protective Services .. 69
Cherokee Child and Family Services 69
Cherokee Social Services 70
Chippewa Tribe Human Services 71
Child Abuse and Neglect Project 71
Navajo Area Social Services 72
Special Services Unit 73
Quinault Tribal Social Services 73
Urban Indian Child Resource Center 74
Ute Mountain-Ute Tribal Social Services 75

Residential Foster Care 76
Cherokee Action for Foster Children Committee 76
Muckleshoot Youth Home 77
Tipler 78

Child Protection Teams 79
Cheyenne River Child Protection Team 79
Crow Reservation Child Protective Team 79

Legal Services/Guardians Ad Litem 80
Navajo Children's Legal Services 80
Ute Mountain-Ute Tribe Guardian Ad Litem Project 81

Family Support Services 81
Parent Support Network for Urban Native American Families 81
Northland Crisis Nursery 82
Women's Support Center 82

CHAPTER VII: CONCLUSION: FOR FURTHER INFORMATION 85

Organizations of Note 85
Resource Directories 85
National Resource Centers for Child Welfare Services 86
National Resource Center for Family Based Services 86
National Resource Center for Foster and Residential Care 86
National Legal Resource Center for Child Welfare Services 87
National Resource Center for Child Welfare Program Management and Administration 87
National Resource Center for Youth Services 87
National Resource Center for Special Needs Adoption: Spaulding-Michigan 87
National Resource Center on Child Welfare Services to Developmentally Disabled Children 87

National Child Abuse Clinical Resource Center 87
National Resource Center for Child Abuse and Neglect 88
Tribal Court Systems Profiled 88

INTRODUCTION: THE PROTECTION OF NATIVE AMERICAN CHILDREN FROM ABUSE AND NEGLECT

The Maltreatment of Native American Children: Why This Topic Merits Special Consideration

On June 4, 1986, Judge John Skekette, Judge of the Juvenile Court Center in Grand Rapids, Michigan, and Chair of the Committee on Child Welfare of the Advisory Board to the National Center on Child Abuse and Neglect (NCCAN), reported on his Committee's findings in regard to their investigation of issues surrounding the problem of maltreatment of Native American children. Among its findings, the Committee saw a "desperate need" for the coordination of the activities of tribes, local governments, the Federal government, and the private sector in identifying, treating, and preventing child abuse and neglect within this special population.

The Committee also noted the growing awareness on reservations that child maltreatment is a serious problem, noting that this threat to the health and welfare of the next generation is at least as serious among Native Americans as it is across the United States and that given such indicators as the disproportionate placement of American Indian children in foster care (estimated at five times higher than the general population) may be more acute. Studies that will be cited later in this Report also bear witness to the higher incidence of child maltreatment cases involving Native American children, but the higher incidence rate alone is not the sole source of concern in this regard.

Because of the unique relationship between the Federal and tribal governments, official action for child protection represents a complex area of the law. As citizens of a "domestic, dependent nation," as first characterized by the U.S. Supreme Court in 1831 (Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1,17) Native Americans are members of a distinct political community with a special relationship to the Federal Government. This relationship is especially complex in regard to family law matters. As will be seen, the Federal role in directly providing child protection services is generally limited to that of a leadership role, with the actual administration of child protection systems a matter of State jurisdiction. However, two special populations, Native Americans and the military, are under the direct control of Federal law and policy in many areas of the law usually left to the States, including family or domestic relations law and the other areas of jurisprudence important for child protection. Thus, the Federal Government has special obligations in the protection of Native American children, as members of a special population under Federal control.

Whether actual child protective services are provided through Federal or State programs and agencies, the awareness of another factor in the provision of these services is another reason that the protection of Native American children merits special consideration. As will be discussed in this report, numerous commentators have observed the tragic end results of misunderstandings engendered by cultural differences between Native Americans and non-Indian service providers. In child maltreatment cases in the general population, the delicate balance between family privacy and child protection may be difficult for those obligated in the interest of child protection to

intervene in possibly dysfunctional families. This difficulty is exacerbated when the parties involved do not share a common culture. To further complicate the problem of cultural differences, it should also be remembered that Native Americans are by no means a homogeneous group, any more than non-Indians of European ancestry are of a single culture. Just as an individual of Mediterranean heritage may differ culturally from his neighbor of Scandinavian ancestry, so might a Native Alaskan's attitudes and background stand in contrast to those of, for example, a Seminole or Cherokee in the eastern United States. As the American Indian Law Center explains: Among Indian cultures--as with other groups--there is a "cultural reality" as perceived by the members about family life, child rearing, social conformity, and values. These and other aspects of the culture are transmitted from generation to generation and provide for some degree of predictability of relationships and activities within the group. Just as the white Anglo society is not some uniform or identical value system, no two Indian cultures are totally alike. Navajo family life is certainly not a mirror image of family life among the Sioux or the Cherokee. Therefore, the problems of child abuse and neglect must be approached not only through the broader aspects of Indian culture, as opposed to non-Indian cultures, but also through the social environment of the individual tribal cultures. Only then can the uniqueness of tribal child-rearing practices, kinship systems, and traditional family values become a positive force in dealing with child welfare.

However, although Native American communities or tribes may vary in size, culture, and history, they share a common concern: the protection of their children and preservation of their heritage. Similarly, concerned citizens and officials in the general population and in the Federal and State governments share a commitment to the protection of all children. With this common commitment, all concerned citizens, whether of a given tribe, State, or the United States, are beginning to work together to strengthen our families and preserve the next generation from abuse and neglect. The problems of high incidence, complex legal jurisdiction, and cultural differences present both a challenge and an opportunity to all concerned with the preservation of Native American families and protection of their children. As will be seen, Native Americans have endeavored, especially within the past 3 decades, to meet these challenges within their own communities. The Federal government, within its unique relationship to American Indian peoples, shares this commitment to meeting these challenges. In his Indian Policy Statement of January 24, 1983, President Ronald Reagan stated that "responsibilities and resources should be restored to the governments which are closest to the people served." With this statement, the President delineated the Federal role in combatting the abuse and neglect of Native American children as one of the advisor and assistant to Native American communities, as it is in this regard to all American communities. Thus, all governments have an obligation to work together to protect our future and most precious natural resource: our children.

Purpose of This Report

The National Center on Child Abuse and Neglect (NCCAN), established under the Child Abuse Prevention and Treatment Act (CAPTA) in 1974, is the focal Federal agency for the nationwide commitment to protection from abuse and neglect for all of our children. Among its many activities in this regard is the operation of the Clearinghouse on Child Abuse and Neglect Information.

The Clearinghouse, as the public information arm of NCCAN, operates a computerized database of documents, research, laws, audiovisual materials, and programs dedicated to understanding and thereby combatting the problems of family dysfunction and child maltreatment.

This Report is in essence a literature review of the materials held in the Clearinghouse database pertaining to Native Americans. By presenting a review of child abuse and neglect information that addresses the issues unique to Native Americans, we hope to answer for our part the call for coordination of resources; that is, to inform readers of the type and depth of information held by the Clearinghouse. For this reason, each chapter of this Report concludes with a bibliographic reference to the materials cited therein and its concluding chapter is a list of resource directories and organizations to consult for additional information.

But beyond its purpose as a literature review, this Report is also intended as a primer for those interested in understanding and meeting the challenges posed in identifying, treating, and preventing abuse and neglect of Native American children. For this reason, we have gone beyond the resources of the Clearinghouse to gather the most recent information available on Indian child protection. In this regard, particular acknowledgement is due Linkages, an information/exchange bulletin on Native American child welfare published by TCI, Incorporated, an Indian-owned small business, with funds from the U.S. Department of Interior, Bureau of Indian Affairs, Division of Social Services. Given the vitality of tribal/Federal/State efforts to address this problem, action and policy for Indian child protection is moving at a swift rate. Published six times a year, Linkages is an excellent resource for keeping abreast of developments in Indian child welfare, which encompasses child maltreatment issues.

By using both existing Clearinghouse database materials and the updating information of other resources such as Linkages, we hope to shed light on the legal, social, and political frameworks, both existing and under construction, for understanding and eventually ending the tragedy of maltreatment for Native American children. Earlier information collection efforts and NCCAN reports, notably American Indian Law: Relationship to Child Abuse and Neglect, by Baurley and Street, centered on the child protection provisions of Indian Tribal Codes. This Report goes beyond a review of these codes, for these codes are best understood in the context of their legislative, political, and social histories. Also, enactment and revision of Children's Codes by tribal legislators is but one of the many activities currently being undertaken for the protection of Native American children. In view of the important legislative and policy developments in the past several years, especially the enactment of the Indian Child Welfare Act (ICWA) of 1978 and the tribal response to its enactment, tribal codes must be viewed in the context of the ICWA and other Federal laws and policies.

In the same way, Native American programs, research, publications, and other activities aimed at increasing the level of inter-cultural understanding are important for understanding the delivery of child protective services to Native American families, which is, in the final analysis, the crucial component for turning legislative activity into social action.

Also, in reviewing existing materials to determine the scope of this Report, we noted the existence and quality of analyses of Indian tribal codes prepared by other Native American-oriented organizations. The primary focus of the Clearinghouse database collection is child abuse and neglect information, of which information relevant to American Indians is but one subset. Rather than duplicate the efforts of the various organizations in researching this area of concern, we will illuminate and hopefully help coordinate, from our perspective, the information available from these organizations. Readers knowing of information or organizations of interest not referenced in this Report are asked to contact the Clearinghouse so that we can continue to keep the database current. All readers are invited to join us, through their questions and comments, in improving and revising our knowledge of the issues and concerns that will be addressed in this Report. In this way we hope to contribute to the partnership of all devoted to eradicating child maltreatment as a threat to our future fellow citizens.

Background and History of Native American Law and Sociopolitical Systems

To understand the issues that accompany the study of child abuse and neglect among Native Americans, it is necessary to understand the background of Indian law, culture, and political systems as the structures both stressed and called upon when the breakdown of Indian family relationships results in maltreatment. Hand-in-hand with this understanding is the need to review how the problems of child maltreatment are addressed in the general population. While the Federal and State governmental roles were alluded to briefly earlier and will not be discussed at length here, such mention will be made as needed to clarify issues particular to Native Americans that would otherwise not be familiar to some readers.

Following this historical review, the issues being addressed today by Native American communities both on and off tribal reservations will be discussed. Both the history and the issues arising from this historical background form the structure of this Report, for its chapter headings concern the major points for understanding the present response to the problem of child maltreatment among American Indians. The next chapter will describe tribal codes and Native American legal systems as they relate to child protection. The third chapter serves as an update to information provided by Baurley and Street in regard to the Indian Child Welfare Act (ICWA) of 1978. At the time the earlier report was written, the ICWA was recently enacted and its ramifications and interpretations were just beginning to be developed. The ICWA is an important milestone in the development of the Native American response to the problem of child maltreatment, and therefore publications concerning the ICWA will be examined in-depth.

In addition to the ICWA, other Federal and State laws, programs, and policies impact upon Indian child protection and these will be discussed in the fourth chapter. But beyond official action on tribal, Federal, and State levels are the attitudes and actions of people involved for and with Native American families. Thus service delivery issues, generally and as particular to both those such as social workers, medical practitioners, and mental health professionals and those addressed by Indian communities and families themselves, will be discussed in the fifth chapter. Similarly, all relevant prevention, treatment, or other child protection programs contained in the Clearinghouse database as of 1985 will be sketched in the sixth chapter. As

stated earlier, this Report will conclude with a listing of resource references and organizations.

One final provision concerns the unique nature of the study of child maltreatment as an aspect of child welfare concerns. Child abuse and neglect is but one of various child welfare topics, but certain other child welfare topics, such as adoption and foster care, are interrelated with child maltreatment concerns and may be of particular interest to Native American communities. As much as possible, this Report will be limited to child abuse and neglect issues, but other child welfare topics particularly important in addressing Indian child maltreatment will be raised as appropriate.

CHAPTER I

HISTORICAL DEVELOPMENT OF LAW AND POLICY: THE RELATIONSHIP BETWEEN INDIAN AND FEDERAL/STATE GOVERNMENTS

Questions of Jurisdiction. A fundamental issue in the development of Native American law and legal systems for child protection is jurisdiction or the authority to enact, enforce, and interpret law. Jurisdictional issues among tribal, Federal, and State governments have been historically complex and reflect changes in Congressional policy over the past 200 years that have alternated between assimilation and self-determination. This discussion will use jurisdictional issues as a focal point in describing the history of Indian child protection jurisdiction. Further discussion of jurisdictional issues may be found in the NCCAN's American Indian Law report cited earlier. A more chronological sketch of Federal policy toward the Indians through 1970 may be found in Slaughter's extensive literature review on Indian child welfare (pp. 6-11). Also, Reese describes, based on his experiences as a legal services attorney for reservations in Montana, the detrimental impact of legal confusion over jurisdictional issues upon Native American children.

A specific use of the term jurisdiction refers to the power of a court to hear a custody proceeding, the most common mechanism for processing child maltreatment cases in an American Indian setting. The grant of jurisdiction for this purpose, as well as other matters directly affecting Indian families, is necessarily tied to the concept of sovereignty, generally defined in the law as "the supreme, absolute, and uncontrollable power by which any independent State is governed," or "the absolute right to govern" a particular area. As explained by the Center for Social Research and Development, University of Denver, within the boundaries of Federally recognized reservations, American Indian tribes retain many of the attributes of sovereignty available to States or political subdivisions of States, which include the right to adopt a form of government of their own choosing; to define tribal membership; to regulate the domestic relations of members; to tax; and to control, by tribal laws enforced through the tribal courts, the conduct of tribal members, and, in some instances, the conduct of nonmembers while on the reservation.

Nonetheless this degree of sovereignty, and the degree of jurisdictional control it implies, is derived from a number of sources and thus was often subject to modification. Until recently, jurisdiction over child protection cases arising on Indian reservations was a distinct issue to be decided on a case-by-case basis. Recent changes in Federal law and policy, especially the ICWA, have resulted in increased grants of jurisdiction to tribal courts, with accompanying developments in tribal law. Thus, Federal law and policy has a direct impact on tribal law and legal systems.

Early Milestones in Federal/Tribal Jurisdictional Development. Federal jurisdiction, as the United States government's power over American Indians, is derived from the Constitution, particularly the commerce and treaty-making clauses, and numerous early treaties with various Indian tribes. In addition, the Federal judiciary has recognized and defined the perimeters of tribal sovereignty, particularly in two early landmark cases, Cherokee Native v. Georgia (30 U.S. (5 Pet.) 1 (1831)) and Worcester v. Georgia (31 U.S. (6 Pet.) 350 (1832)).

In the 1831 case, Cherokee Nation, the Supreme Court defined the legal and governmental status of the Cherokee Nation as a "domestic dependent nation," thereby establishing the self-governing status of Indian tribes. The next year, the Supreme Court established the principle of Federal plenary power over the regulation of Indian affairs in Worcester. In that case, the Court struck down State laws regulating the residence of non-Indian persons on tribal lands, thereby precluding the exercise of power in this area. Thus, the principles of Congressional plenary power over Indian affairs and the tribes' right to internal sovereignty were established.

However, over the next 50 years these principles eroded, and Congress began to assert more influence over internal Indian affairs, as evidenced by the Major Crimes Act of 1885 (18 U.S.C. 1158), which gave Federal courts criminal jurisdiction over certain offenses, predominantly felonies, committed between Indians on reservation lands. This Act was passed in response to the 1883 Supreme Court ruling in Ex Parte Crow Dog (109 U.S. 556 (1883)) that a Federal court had no jurisdiction to try a Sioux Indian for the alleged murder of a fellow Indian that occurred on reservation land. The Major Crimes Act remains the one major Federal statute that grants Federal courts jurisdiction over Indians. Thus, criminal acts generally classified as felonies are normally within the jurisdiction of the Federal court having general jurisdiction over the area that includes the reservation. The Federal court, however, today may share that jurisdiction with the State in which the reservation is located. This point is particularly important when child abuse cases are criminally prosecuted, as is more likely for instances of serious physical injury to the child and sexual abuse in the general population.

In addition to prosecution in State criminal courts, child abuse and neglect cases in the general population may be heard in State juvenile or family courts, whose purpose is to intervene on behalf of the child and oversee, if at all possible, the reunification after social services treatment of the dysfunctional family. State jurisdiction over Indian affairs arises either from creation by the State government or from delegation by the Federal Government. State-created jurisdiction arises only where reservations were created by and may be owned by that State. However, in terms of child maltreatment cases, State jurisdiction is derived from delegation by the Federal Government, the more usual and complex source of State court authority on tribal lands. Generally, this delegation of jurisdiction to State courts was accomplished either by geographically specific legislation or under the authority of Public Law 280 (18 U.S.C. 1162). Examples of the former form of delegation include New York and Kansas, which received jurisdictional grants by special legislation, which gave New York concurrent jurisdiction in criminal matters and exclusive jurisdiction in all civil matters, and gave Kansas only exclusive criminal jurisdiction to Kansas courts.

Public Law 280 and the Termination Policy. Although other Federal laws and policies enacted in the late 1800s and early 1900s impacted upon the development of Indian law (including the Allotment Act of 1887, under which parcels of lands were allotted to individual Indians; the Indian Citizenship Act of 1924, which granted official U.S. citizenship to all Native Americans; and the Indian Reorganization Act or Wheeler-Howard Act of 1934, which ended the land allotment policy and provided for the establishment of formal tribal governments), none had the impact, albeit adverse, on the development of modern Native American law of Public Law 83-280 as the expression of Federal termination policy.

(This policy was first expressed in House Concurrent Resolution 108.) Under this policy, Federal responsibility for tribal welfare was to end, and thus the numerous treaties establishing Federal-tribal relationships were abrogated. As Slaughter notes, "the termination policy had a disastrous effect on tribal community development initiatives, as the tribes believed to be most self-sufficient were those most likely to be terminated" (p. 9).

Today the ramifications of Public Law 280 still affect jurisdictional issues, for most States derive their power over Indian tribes under this provision. States exercising jurisdiction under this provision fall into two groups, specified States and permissive grant States. California, Minnesota, Nebraska, Oregon, Wisconsin, and Alaska are six States that were given criminal and civil jurisdiction over acts or causes of action occurring on Indian reservations within their borders. Four tribes were granted exemptions from this jurisdictional plan and include Red Lake Reservation in Minnesota, Warm Springs Reservation in Oregon, Menominee Reservation in Wisconsin, and the Metlakatla Reservation in Alaska (18 U.S.C. 1162 and 18 U.S.C. 1360).

During the years following the passage of Public Law 280, various Indian tribes vehemently protested the Federal action and their activities resulted in amendments to the law. The amendments permitted States that had assumed jurisdiction over tribes under Public Law 280 to retrocede to the Federal Government the power that had been assumed, which some States, such as Nevada, have done. However, the exact areas of subject matter and territorial jurisdiction remain in flux and subject to a great deal of litigation. Also, it should be remembered that in regard to the treatment of child abuse and neglect, social services are generally delegated to local city or county authorities by the State. Thus, whatever power local governing bodies exercise over Indian reservations results from a delegation of the State's existing power to the local authority, a fact to consider in formulating treatment options. The remaining States with Indian populations received permission to assume, through appropriate legal action, subject matter, and personnel jurisdiction to whatever extent the State desired. This legal action consisted of amendments to the State constitutions of Washington, Montana, and New Mexico or affirmative legislation that provided for assumption of jurisdiction over a tribe or group of tribes in Colorado, Florida, and Iowa. Disputes over whether State actions attempting to assume jurisdiction have been legally sufficient further complicated the jurisdictional issue.

Self-Determination. As Slaughter describes, Public Law 280 was effectively if not expressly repudiated in 1970 with the pronouncement of a new Federal policy of self-determination:

> On July 8, 1970, in a message to Congress, President Nixon stated that the termination policy was a violation of treaty commitments and asked for a repeal of H.C.R. 108. He also called for self-determination for Indian people and for Indian communities to take over control of Federally-funded programs as they chose to do so. He further directed the Office of Economic Opportunity and the Department of Health, Education, and Welfare to help Indian leaders develop Indian centers in urban areas, where the BIA does not provide services (p. 10).

In a Statement of Indian Policy on January 24, 1983, President Ronald Reagan reaffirmed the Federal policy of self-determination and set further goals for its implementation:

> In 1970 President Nixon announced a national policy of self-determination for Indian tribes. At the heart of the new policy was a commitment by the Federal government to foster and encourage tribal self-government. That commitment was signed into law in 1975 as the Indian Self-Determination and Education Assistance Act.
>
> The principle of self-government set forth in this act was a good starting point. However, since 1975, there has been more rhetoric than action. Instead of fostering and encouraging self-government, Federal policies have by and large inhibited the political and economic development of the tribes. Excessive regulation and self-perpetuating bureaucracy have stifled local decisionmaking, thwarted Indian control of Indian resources, and promoted dependency rather than self-sufficiency.
>
> This administration intends to reverse this trend by removing the obstacles to self-government and by creating a more favorable environment for the development of healthy reservation economics. Tribal governments, the Federal Government, and the private sector will all have a role. This administration will take a flexible approach which recognizes the diversity among tribes and the right of each tribe to set its own priorities and goals. Changes will not happen overnight. Development will be charted by the tribes, not the Federal Government.
>
> This administration honors the commitment this nation made in 1970 and 1975 to strengthen tribal governments and lessen Federal control over tribal governmental affairs. This administration is determined to turn these goals into reality. Our policy is to reaffirm dealing with Indian tribes on a government-to-government basis and to pursue the policy of self-government for Indian tribes without threatening termination.
>
> In support of our policy, we shall continue to fulfill the Federal trust responsibility for the physical and financial resources we hold in trust for the tribes and their members. The fulfillment of this unique responsibility will be accomplished in accordance with the highest standards.

Also within the Statement, the President called upon Congress to expressly repudiate Public Law 280. "The administration wants this lingering threat of termination replaced by a resolution expressing its support of a government-to-government relationship."

The ramifications of this Policy Statement extend to many areas of life on Native American reservations, including child welfare concerns. Tribal governments are again beginning to establish and operate court systems to hear children's cases. Beyond these Presidential statements, several pieces of legislation, either enacted within the past 25 years or not expressly repealed

by Public Law 280, have aided in this process. These include the Indian Education Act of 1972 (Title IV of Public Law 92-318), which requires Indian input into the planning of all programs funded under the act; and the Indian Self-Determination and Education Assistance Act (Public Law 93-638), enacted January 4, 1975, which directs the Department of the Interior and the Department of Health, Education, and Welfare to contract with tribal organizations to plan, conduct, and administer programs provided for in the 1921 Snyder Act, the 1934 Indian Reorganization Act, and the 1954 Act transferring Federal responsibility for health services from the BIA to DHEW (Slaughter, p. 10). But perhaps the most important of these for asserting tribal jurisdiction over dysfunctional Native American families remains the ICWA, which places jurisdiction, wherever possible, over Indian child custody proceedings with the appropriate tribes, and regulates Indian child custody proceedings remaining in State courts by establishing certain safeguards. This measure will be discussed in detail in the third chapter of this Report.

Child Protective and Other Services for Native Americans: Historical Antecedents

While current Federal and State laws and policies affecting Native American families will be discussed in Chapter IV, Slaughter provides a compilation of historical developments that place modern social service delivery systems in their historical context and provides a framework for understanding Native American sociopolitical systems today.

In addition to developments in the law, Slaughter notes social developments that brought change to the status of Native Americans, citing as one of the first the Meriam Report, produced in 1928 by the Institute of Government Research (the Brookings Institution). This report documented problems on the reservations and made recommendations for their improvement. While a number of the reforms recommended were not carried out for many years, it was considered "a document that all who were interested in the Indian were able to rally behind" (p. 8). Further, Slaughter cites the view that the Meriam Report was the first recognition of the lack of a unified program for Native American families, and notes the actions taken by Federal agencies in the years that followed:

> In 1930 the Commissioner of Indian Affairs reorganized the Bureau of Indian Affairs, dividing it into "Human Relations" and "Property." "Human Relations" included Health, Education, Agricultural Extension, and Industry. In 1931, the first school social workers were assigned under the BIA Division of Education during the curtailment of boarding schools, for the purpose of assisting in the adjustment of children in their own homes and in determining which children should be admitted to the remaining boarding schools.
>
> By 1936, there were 30 social workers under the Division of Education, of whom 10 were Indians. Their scope of work had expanded to include child welfare services such as finding foster homes to replace the boarding school care formerly provided. Although work-relief programs for Indians existed at this time, the social workers were not used for determining eligibility.

In 1941, the BIA Division of Welfare was formed and the social workers were transferred to this division from Education. Ever since the treaties of the late 1800s, the Federal Government had been providing food and clothing to Indians through a system of rations. In 1944, cash payments became the main source of assistance, although rations continued to be given until the U.S. Department of Agriculture food stamp program was established. The BIA social workers were involved in determining eligibility for assistance to the extent that by 1946 many BIA social workers saw this as the sole or primary function.

In 1950 the BIA established area offices, each of which supervised a number of local BIA agencies. Area social work positions were included when the new area offices were funded. The first area office child welfare positions were added in 1951, with two child welfare specialists hired at the central office in 1952. This year also saw the publication of the first welfare manual and the first annual review of placements to boarding schools for other then educational reasons. During the 1950s, foster homes began to be used more extensively than before as an alternative to boarding school placements.

In the late 1950s, BIA social workers became concerned about the number of Indian children on long-term foster care or boarding school placements. Adoptive homes did not appear to the social workers to be available for these children. The result of the recognition of this problem was the establishment of the joint adoption project of the BIA with the Child Welfare League of America (CWLA) in 1958 (see later discussion in Chapter 5). Many tribes opposed this project, which placed Indian children in non-Indian homes often hundreds of miles from their native reservations (pp. 16, 17).

These agency policies and the break-up of Indian families they engendered are one of the primary challenges being addressed today as Native American communities and Federal/State Governments seek to re-build Indian family and social systems. With these historical antecedents in mind, the various individual elements to be considered in a discussion of Native American child maltreatment will be examined in the chapters to follow.

Chapter I: Bibliography

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CHAPTER II

NATIVE AMERICAN TRIBAL CODES AND LEGAL SYSTEMS

This chapter will review the tribal code collections and articles concerning these codes and their provisions relating to child abuse and neglect. In addition, tribal court systems established to administer these laws will be examined.

Native American Jurisprudence

It should be remembered that the histories, legal systems, and social organizations of Native American tribes were different from the social and political forces brought from the Old World which shaped American jurisprudence, and thus their underlying precepts are not grounded in common law as understood by American attorneys. Tribal codes are a special type of legal literature, because they have been formulated in large part as a response to, rather than as a part of, American legal traditions and jurisprudence. Unlike the laws of the States, Indian tribal codes are not uniformly codified; do not respond to uniform legislative issues, because the degree of jurisdiction that may be asserted varies widely; and do not necessarily govern the same social or political structures found in the State systems. Nor can these codes be compared to municipal ordinances, although some do have the same form and structure, because the tribes are not entirely within the jurisdiction of a larger sovereignty akin to a State. Also, given the historical differences in social structure and culture, the problems of child maltreatment requiring a legislative response can be quite different from those encountered by State and local legislators.

In the general population, child protection laws are within the ambit of State legislatures, because the authority to legislate and enforce domestic relations provisions or laws relating to criminal acts, occurring entirely within the sphere of State jurisdiction, is reserved by the Constitution to the States. The systems and procedures created by the States respond to the needs of their citizens, and thus, the legislative provisions relating to child abuse and neglect may vary from State to State, depending upon the population, size, and social structures found within the individual State. Similarly, the laws and traditions observed on Indian reservations vary depending upon population, size, and social structure, as well as other legal, social, and political factors. Compared to States, however, Indian reservations represent an entirely different form of political structure, because the historical and legal antecedents for the organization of reservation land were quite different from the antecedents leading to the annexation of the 50 States.

It should also be remembered that the law of child abuse and neglect is in and of itself a hybrid in legal circles. While child maltreatment is commonly viewed as a domestic relations area, a given child maltreatment case may be heard in juvenile and/or criminal court systems. Constitutional issues may arise, because the parental rights of privacy, family integrity, and due process are often at odds with the child's rights to care and protection. Criminal issues may also arise in child maltreatment situations, in that many forms of maltreatment could be viewed as some form of actionable assault, even

absent the special parent-child relationship that separates this area of legal concern. Juvenile justice systems, in which most adjudicated child protection cases are heard, constitute still another area of law filled with special rules and procedures. Thus, laws governing a particular child maltreatment case before a tribal court may be contained in a discrete section of that tribe's code, or may be scattered throughout the code, if that code is organized in separate criminal, juvenile, and civil procedure chapters.

Comparisons of Tribal Codes. Just as tribal codes differ as a group from State laws, there are also wide variations among the tribes. The Clearinghouse database contains two primary tribal codes collections, and those compiling these collections have developed classification systems to characterize the essential similarities and differences among individual collected codes.

Professor Ralph Johnson of the University of Washington Law School collected and preserved on microfiche, 17 Indian tribal codes in 1980.

In his introduction to this microfiche collection he expresses the common problem faced by all tribal code collectors:

> One of the basic stumbling blocks to this renewed interest in tribal codes is the lack of easy access. On many reservations copies of the tribe's code are in such limited supply that for all practical purposes they are unavailable. Many reservations have no regular procedure for incorporating amendments or changes into their codes. Off the reservation, the problem of locating an up-to-date code is even worse. In addition, there is no central repository for Indian tribal codes in the BIA, or elsewhere, so anyone wishing to make comparisons between several codes, or to locate model provisions for enactment elsewhere, must seek out these documents on a reservation-by-reservation basis.
>
> The current difficulty in obtaining access to tribal codes is reminiscent of the situation with State and local governments in this country prior to the 1950's. The lack of availability of municipal and some State codes was remedied only by a massive and expensive code revision and publication movement during the 1950's and 1960's. A similar, albeit more modest movement seems to be under way now in the Indian community. Some of the more recent codes tend to look like the municipal codes of large city or county governments, both in size (500 pages or more) and in coverage (dealing with building standards, water pollution control, water allocation, game management, zoning, planning, juvenile delinquency, family welfare, probate, and numerous other matters).
>
> The heightened interest in these tribal legal codes is one of the main reasons for this microfiche set. It was the hope of the editors and the original sponsors of the project that increased access to and greater awareness of Indian tribal codes would further stimulate the present interest in Indian tribal law.

He also provides a general definition of tribal codes: "At its most basic, an Indian legal code is the body of law applied by the tribe to settle disputes between parties over whom the tribe has jurisdiction" (p. 8). For legal purposes and the purposes of this discussion, the definition of a tribal code is limited to written legal materials reflecting the tribe's duly enacted laws. (It should be noted that written codes of law were not originally a part of Native American jurisprudence, and on some reservations litigation can be decided on the basis of customary law or oral traditions.)

In reviewing the structure of the codes contained in the microfiche collection of written Indian tribal codes, Professor Johnson noted three basic formats as follows:

> The tribal codes come in a variety of formats. These break down into three major groups. The hallmark of the first group is that the physical code is an integrated document. All of the individual laws in force have been brought together in one document and arranged according to some logical principle with some way of incorporating later revisions...
>
> The second grouping consists of anything that represents an attempt to organize tribal law. Most likely, there will be a document titled something like Law and Order Code for... but every law in force was not integrated into the code or no provisions for updating the code were made. On a reservation with this kind of format, the tribal court, lawyers, and council must use the code in conjunction with the other materials.
>
> The overriding characteristic of the third group is chaos. All that may exist are the individual laws, often without any clear numbering system, any reference to related laws, or any notations as to which laws still are in effect. This third format is most likely to occur where a tribe has been operating under the CFR Code and has augmented the code with ordinances not inconsistent with the CFR Code or where a tribe has managed to maintain a traditional Indian court but has enacted bits and pieces of legislation to meet specific problems (pp. 11-12).

In any format, tribal codes represent the efforts of the tribes in asserting sovereignty over the reservation and its residents. The exercise of sovereignty, or the authority to enact and enforce law, is included within the concept of jurisdiction, as previously discussed.

Baurley and Street, for their 1981 analysis of tribal code provisions concerning child maltreatment, also collected from various sources tribal codes for study. On the basis of this collection, they developed a three-part classification of tribal justice systems as follows:

> Indian courts, in their present form, are only about 50 years old. They were created as a result of the Wheeler-Howard Act, more commonly known as the Indian Reorganization Act, which was the most significant piece of Indian-related

Federal legislation enacted in the 1930s. The purpose of this 1934 Act, according to the Senate Report, was "to stabilize the tribal organization of Indian tribes by vesting such tribal organizations with real, though limited, authority, and by prescribing conditions which must be met by such tribal organizations." The courts created during this period can be classified as either tribal, traditional, or Code of Federal Regulations (CFR) courts.

Tribal courts, which constitute the largest group, are courts whose jurisdictional bases and applicable law may be found, in whole or in part, in tribally written codes. Traditional (or customary) courts operate in accordance with long-standing custom passed along from one generation to the next by word of mouth. Currently, Pueblos in the Bureau of Indian Affairs' Albuquerque Area may still have traditional court systems. CFR courts are those which were established pursuant to the provisions of Title 25 of the Code of Federal Regulations. They are regulated by Title 25 provisions, as well as regulations promulgated thereunder.

Functionally, there are few significant differences between tribal courts and CFR courts. Once a case enters either system it progresses and is resolved in essentially the same manner. Actual differences between customary courts and tribal and CFR courts are difficult to ascertain because the unwritten nature of the traditional court procedure and law makes it difficult to locate sufficient information for comparison. However, the passage of the Indian Civil Rights Act and other similar Federal legislation extending constitutional protections to members of Indian tribes has provided an impetus for procedural and substantive similarities between tribal and CFR courts (p. 8).

While the operation of tribal courts will be discussed later in this chapter, Baurley and Street's explanation of CFR courts and the Code of Federal Regulations provisions under which they operate bears mention as explanatory of one type of tribal code and its approach to the problem of child maltreatment.

Subchapter B of Part 11 of Title 25 of the Code of Federal Regulations creates Courts of Indian Offenses to administer justice in those Indian reservations where neither traditional (oral) Indian law systems nor tribal code or State courts operate. Courts operating under Title 25 are not permitted where State courts are doing an effective job, and tribes may displace CFR courts by adopting a tribal code and having it approved by the Secretary of the Interior.

The domestic relations portion of Subchapter B discusses marriage, divorce, adoption, paternity determinations, child support, wills, and rules of inheritance. No reference is made to children or to the role of the family in assuring their welfare.

In the portion of Subchapter B entitled "Code of Indian Tribal Offenses," 61 offenses are described, and the punishment for each is detailed. The enumerated offenses reflect the needs and circumstances of life in Indian reservations and are oriented toward the preservation of order among people who deal frequently with livestock.

The portion of the list of offenses having possible value for cases of child abuse or neglect contains statements of several common law offenses. Such offenses have equal applicability to adults and children as victims, and use of these sections could provide a basis for prosecution of complaints of child abuse or neglect. For example, Sections 11.38 and 11.39 deal with assault and battery, respectively. A parent or other responsible adult guilty of physical abuse, as it is defined by State codes and some tribal codes, seemingly could be prosecuted for the same acts under those sections of Subchapter B criminalizing assault and assault and battery.

Section 11.49 prohibits disorderly conduct and includes fighting in a public place. An act by a parent or responsible adult against a child in public could be prosecuted under this section. Section 11.60C's prohibition of fornication could be used to prosecute cases that receive special treatment elsewhere under the heading of sexual abuse of children, as could Sections 11.63 and 11.63C, which make it a crime to infect another person with a venereal disease.

The issue of child neglect, though not the subject of per se treatment in Subchapter B, does receive more nearly direct treatment than child abuse. Sections 11.64 and 11.64C provide sentences of 3 months at labor for any Indian who for any reason refuses or neglects to furnish to his dependents food, shelter, or other necessities. These sections reflect an intentional commitment to protect Indian children from the lack of the necessities of life, which is a basic form of neglect. Section 11.65 continues the concern of Subchapter B for the welfare of children by criminalizing neglect or refusal to send one's children or any under one's care to school. Here the notion of responsibility extends beyond the child's biological caretakers and includes responsible supervisory adults. Thus this section reflects the Child Abuse Prevention and Treatment Act's concern with the acts of people other than biological parents.

A further, less direct approach to controlling child neglect may be found in the language of Section 11.66 of Subchapter B. Section 11.66 deals with the consequences of neglect by criminalizing the acts of anyone who willfully contributes to the delinquency of a minor. Though the requirement of willfullness may make the task more difficult, prosecution for child neglect could conceivably be approached through this provision.

> No other common law offenses with conceivable applicability to instances of child abuse or neglect are included in Subchapter B or in Title 25. No other more specific, support-related crimes that are treated elsewhere as child neglect are included in Title 25 (p. 18).

In its December 1985 edition, Linkages reports recently proposed revisions to the Code of Federal Regulations which will substantially affect child maltreatment cases in tribal courts by updating the criminal offense sections within 25 CFR Part II and creating new sections on criminal procedure, domestic relations, probate, appellate, and juvenile proceedings. Most relevant to child maltreatment cases is a new subpart (I) which will create a children's court based on the Model Children's Code developed by the American Indian Law Center. Among the provisions of this subject, which also contains provisions to govern juvenile offender cases, are sections concerning the general operation of the children's court, which includes guardian ad litem and court record criteria, and a section devoted to minor-in-need-of-care procedure, which includes protective custody, shelter care, adjudication, dispositional, and termination of parental rights criteria. These proposed revisions, promulgated by the Bureau of Indian Affairs, were published in the October 24, 1985 edition of the Federal Register (Vol. 50, #206, p. 43235-56). The comment period on these changes ended December 23, 1985.

Code Collections. The Clearinghouse collection of Native American tribal code provisions governing child abuse and neglect matters was primarily gathered from the two previously mentioned collection efforts. In addition, the Clearinghouse has continued its ongoing collection efforts over the past 6 years and has received additional codes with the assistance of the National American Indian Tribal Court Judges' Association. The tribal codes currently contained in the database are listed below. In addition, relevant sections of the 1980 CFR are also part of the database collection.

Acoma Pueblo, Law and Order Code (undated).
Ak-Chin, Law and Order Code (1975).
Blackfeet, Law and Order Code (1967).
Cheyenne River Sioux, Tribal Code (undated).
Chippewa-Cree, Code of Indian Offenses (1966).
Cocopah
Coeur d' Alene, Law and Order Code (undated).
Colorado River Tribe
Confederated Salish-Kootenai, Law and Order Code (undated).
Confederated Tribes of the Colville Reservation, Juvenile Code (undated).
Confederated Tribes of Warm Springs, Law and Order Code (1966).
Crow, Tribal Code (undated).
Crow Creek Sioux, Law and Order Code (undated).
Devils' Lake Sioux, Code of Laws (undated).
Duck Valley Paiute and Shoshone, Law and Order Code (undated).
Fort McDermitt Paiute and Shoshone, Law and Order Code (1942).
Fort Peck Assiniboine-Sioux, Law and Order Code (undated).
Gros Ventres-Assiniboine Law and Order Code (undated).
Havasupai
Hopi, Tribal Code (1972).
Hualapai, Law and Order Code (1975).
Isleta Pueblo, Law and Order Code (undated).

Jicarilla Apache, Tribal Code (undated).
Kalispel, Law and Order Code (1967).
Keweenaw Bay, Code, Judicial Procedures and Juvenile Code (1974).
Laguna Pueblo, Judicial and Law and Order Code (1968).
Lake Superior Chippewa (Lac Courte Oreilles) Children's Code (1981).
Lower Brule Sioux, Tribal Code and Penal Code, Ordinance LB-66E, as amended (1966).
Lummi, Law and Order Code, Ordinance L-35, as amended (1969).
Metlakatla Indian Community Juvenile Code (Tsimshian Tribe) (undated).
Mississippi Band of Choctaw Tribe (undated).
Mojave
Muckleshoot, Code (undated).
Navajo, Tribal Code (1977).
Northern Cheyenne, Juvenile Code, Law and Order Code and Ordinance 4(69) (1968).
Oglala Sioux, Revised Code (undated).
Paiute, Tribal Law and Order Code and Resolution 77-17 (undated).
Papago, Children's Code (undated).
Pima Maricopa (Salt River), Law and Order Code (undated).
Port Gamble Klallam, Law and Order Code (undated).
Puyallup
Pyramid Lake Paiute, Law and Order Code (undated).
Quinault
Red Lake Band of Chippewas, Law and Order Provisions, Juvenile Court Code (undated).
Rosebud Sioux, Law and Order Code (undated).
San Carlos Apache, Revised Law and Order Code (undated).
San Ildefonso Pueblo, Law and Order Code (undated).
Shoshone and Bannock, Law and Order Code (undated).
Sisseton-Wahpeton Sioux, Law and Order Code (undated).
Skokomish, Tulalip, Law and Order Code (undated).
Southern Ute Tribe, Law and Order Code (undated).
Spokane, Law and Order Code (1963).
Standing Rock Sioux, Code of Justice (undated).
Sugar Island-Bay Mills Juvenile Code (1978).
Suquamish, Port Madison
Swinomish, Law and Order Code (undated).
Three Affiliated Tribes of Fort Berthold, Code of Laws, as amended by Resolution 67-10 (1967).
Turtle Mountain Band of Chippewa, Code (1976).
Ute Mountain Juvenile Code (undated).
Ute Tribe of Uintah and Ouray Reservation, Ute Indian Juvenile Code (undated).
Walker River Tribe, Law and Order Code (undated).
White Mountain Apache, Law and Order Code (1974).
Yakima, Law and Order Code (undated).
Yankton Sioux
Yavapai Apache, Juvenile Code (1951).
Zuni, Code (revised 1978).

Johnson studied the overall structure and content of these codes and provided some observations concerning the characteristics of tribal codes in general. Noting that some codes were modeled in BIA "boilerplate" or standard forms, he cites the Swinomish code as such an example and compares it to the

CFR Law and Order Code of 1938. Such early codes are identifiable by the date they were enacted (1935 to 1941 approximately), by the number of pages (approximately 40), and by publication format in a small pamphlet-like style. Later codes, from the 1940's and 1950's, may still have the same boilerplate sections but with modifications to meet a particular tribe's needs. Thus, these codes have more pages than the earlier codes and typically have been retyped in an 8½" x 11" format. The modifications may have been incorporated in a revision of the whole code or they may have come into existence by passage of subsequent laws or resolutions which were attached physically or by reference, as in the Blackfeet or Colorado River codes. A typical pattern for those courts operating under 25 CFR was to augment the CFR "Law and Order Code" with ordinances on local matters, such as wildlife regulation, that were not inconsistent with the CFR, as seen in the Eastern Band of Cherokee code.

In recent years, beginning in 1965, various tribes such as the Yakima have undertaken to write entirely new codes rather than revise the existing ones. Typically these newer tribal codes are longer and more detailed. Physically, they tend to look like commercially produced documents with clear type faces and justified margins. Recent codes from tribes that are newly involved in local business ventures or resource management have an interesting flavor (see the Lummi or Puyallup code). For codes lacking a date, the two best keys for identifying one of the newer codes are the inclusion of certain subjects such as juvenile welfare and the definitions of criminal acts and the number of pages. Johnson also noted specific features of other codes. He finds Menominee's Constitution interesting because it contains a number of the provisions typically found in a code. Other tribes such as San Carlos do not appear to have enacted a code as such, only collecting resolutions and ordinances. In most cases, the whole code has been adopted by the council one piece at a time (see the Jicarilla Apache code). Tribal codes are subject to the same hobgoblins as other legal materials, so there are times when the page numbering, section numbers, and other points of reference are in error. An alternative to writing a new code for tribes that were operating under 25 CFR and wanted to change their courts from CFR courts to tribal courts was to "borrow" the format and language of a code from another tribe, as may be seen in reviewing the Fort McDowell code. The Navajo code is one of the most comprehensive in scope and is most sophisticated in terms of incorporating modern code-writing techniques, such as cross references, annotations, tables, indexes, and pocket part supplementation. The law code of the Lower Brule includes copies of the standard forms to be used for wills, marriages, and other common legal matters. Another useful feature found in the Fort Hall code is a glossary defining many of the legal words used in that code. Other tribes such as Port Gamble have included fairly detailed and specific materials such as zoning maps and bail schedules as in many State codes, tribes such as the Hopi may or may not include court procedures as part of the code itself or provide these rules of court in a separate volume (Johnson, pp. 14-16).

Analyses of Tribal Code Child Abuse and Neglect Provisions. While Johnson examined the overall characteristics of tribal codes and provided insight into Indian jurisprudence, two studies analyze tribal code provisions as they pertain specifically to child abuse and neglect matters.

Wichlacz and Wechsler, in a 1983 article, report an analysis of 51 written Indian tribal codes based on a comparison of their provisions with State child maltreatment laws. This analysis revealed that within Native American jurisprudence, criminal and civil proceedings, as in State law, are utilized to deal with child abuse and neglect. While few Indian tribal codes (12 percent) have specific child abuse or neglect criminal provisions, most of the criminal codes (96 percent) proscribe specific acts against children that fall within the usual definitions of child abuse and neglect. Civil tribal code provisions, like their State counterparts, aim to protect the child, improve the home environment, and in extreme cases, remove the child from the home on a temporary or permanent basis. These authors also noted that legislative definitions of child abuse and neglect vary widely, with Indian tribes recently revising their codes having current definitions and other provisions that reflect the national trend in the protection of children and the provision of services. Some tribal codes promote interdisciplinary coordination and encourage the courts to cooperate fully with Federal, State, tribal, public, and private agencies involved in the protection of children from neglectful or abusive practices, thereby paralleling the interagency cooperation provisions of State law. However, unlike the mandatory reporting provisions of every U.S. State and territory, reporting of child abuse and neglect is neither uniformly nor universally addressed in Indian tribal codes.

In regard to Native American legislative guidelines for juvenile court procedure, these authors observed that the manner in which a child protection hearing is conducted by tribal courts is generally very similar to procedures in State courts. Child abuse and neglect hearings in tribal courts may specify that they be judicial or informal and, as often happens, that they be closed to the public. Concerning dispositional alternatives, they observed that Indian tribal courts are not limited to placing a child in substitute care on the Indian reservation and many Indian tribes permit a child to be placed in foster care off reservations. Tribal courts, similar to State courts, have continuing jurisdiction until either the courts dismiss the petition or the child reaches the age of majority. Indian tribal codes may provide for termination of parental rights proceedings on a voluntary or involuntary basis. For the Indian tribal codes reviewed, the grounds for termination of parental rights can be classified into three groups: abandonment; irremediable neglect where the parent is unfit or unable to perform his parental duties; and willful neglect where the parent refuses to provide the child with appropriate care. Tribal courts usually define an abandoned child as one who has been deserted by his parents and whose parents neither provide for this support nor attempt to maintain the parent-child relationship through contact or communication of any kind. The period of time specified for abandonment usually ranges from 6 months to 2 years. Concerning representation for the child, Indian tribal codes, like State laws, may provide for the appointment of a guardian ad litem to represent the child's interest. A few tribal codes were found to make the appointment of a guardian ad litem mandatory where a child is not represented by a parent or the interests of parent and child conflict. Also, Indian tribal codes recognize the parent's and the child's right to be represented at all stages of the proceedings. Tribal codes may be empowered to order medical examination and psychiatric evaluation of the child and parent(s), and several Indian tribal courts require a social study to be performed by a competent agency prior to the adjudicatory hearing.

In summarizing their findings, these authors state that the majority of Indian codes were enacted long before the public and professional awareness of the need for special child protective provisions that has arisen in the past 2 decades, but unlike State laws, many codes were not revised. However, they continue, "a number of Indian tribes have recently enacted codes that are innovative and incorporate the best practices in the field of protective services" (p. 350).

A more recent analysis by the American Indian Law Center of 70 tribal codes collected at the University of New Mexico Law Library also attests to the growing number of tribal code child protective provisions comparable to State child protective statutes as recommended by Federal law and regulation. Among the findings of this computer analysis are that 25 or 35.5 percent have clear definitional sections, that 27 or 39 percent have mandatory reporting provisions, and that 21 or 30.5 percent grant civil and/or criminal immunity to reporters in good faith. In regard to representation for the child, 50 of the 70 codes analyzed have provisions concerning the appointment of a guardian ad litem for the child. Another common child protective legislative provision for the confidentiality of records is contained in three-fourths of the codes studied.

The primary thrust of this analysis was an examination of dispositional provisions, particularly as they ensure appropriate permanent placement decisions in the best interest of the child and community. In this regard, 74 percent of the codes studied include legislative listings of child placement preferences, and 50 percent require periodic placement reviews. Social service treatment for the family is the preferred course of half the tribes whose codes were analyzed, as expressed in language requiring reasonable efforts to prevent family disintegration or reunify dysfunctional families. Perhaps the most significant finding in two regards is that 43 percent of these codes contain specific reference to the Indian Child Welfare Act (ICWA) and that 14 percent designate who is to receive notice from State courts of ICWA cases or who is to intervene in State court proceedings. Not only do these ICWA-related provisions assist in implementing the appropriate placement intent of the ICWA, but it should also be noted that 43 percent of the codes must have been enacted since ICWA's 1978 enactment, which means that 30 tribes have either written or revised their codes within the last 8 years.

This increase in tribal legislative activity should continue in the coming years if tribal councils heed the analysts' advice to include certain basic provisions in their codes, for the Center observes that few of the existing codes contain all of its recommended provisions. However, the addition of 30 new codes in 8 years is a promising sign of the increase in tribal legislative interest in child protection, placement, and custody laws.

Tribal Courts and Legal Systems

The administration and interpretation of tribal codes is the function of tribal courts, which have also experienced a resurgence in recent years. Laudau, Salus, Stiffarm, and Kalb, in a 1980 NCCAN-sponsored publication on the role of courts in child protection, include a description of tribal court procedure, practice, and operation. They write that:

> Tribal courts are very similar to State and country courts, except that a tribal court's jurisdiction is created by tribal and Federal law, not by State law. As in the State court structure, the name of the tribal court exercising jurisdiction over juvenile matters and the age of majority (between 16 and 21 years) will vary from tribe to tribe. A tribal juvenile court has civil jurisdiction. The statutory law of each tribe will describe the purpose, jurisdiction, procedures, rights of parties, and powers of the court.
>
> There are also variations with regard to how the tribes characterize the actual proceedings, such as: child protection, dependency, child abuse and neglect, or minor in need of care. Regardless of these variations, the procedural steps and processes are basically the same. Tribal court proceedings are very similar to judicial proceedings in rural communities; resources and personnel may be limited and proceedings may be less formal than those in the State courts (p. 69).

They also point out certain unique aspects of Indian law, such as the inapplicability of the U.S. Constitution to tribal courts, although they note that the Indian Civil Rights Act of 1968 provides many of the same Constitutional protections for individuals in tribal courts. However, because of the relative youth of these Constitutional guarantees, the extensive body of evidentiary precedents used by State and Federal courts to interpret the Constitution have not developed in tribal courts and thus elaborate rules of evidence are not in effect there. The indigent's right to appointed counsel is also not guaranteed in tribal courts. For children involved in tribal court proceedings, some tribes will have a juvenile court worker whose sole duty is to protect the interests of children and appear in court on children's behalf. Those tribes that do not provide these services delegate the responsibility for protecting children's rights to the judge.

The notice requirements of the due process clause to the U.S. Constitution are observed in tribal courts as in Federal and State courts, and because of the importance of extended families in Indian culture, notice of tribal court proceedings involving Native American children may be required for not only the parents, but also to other family members such as aunts, uncles, and grandparents.

These authors also describe the tribal court hearing process in juvenile cases:

> In cases requiring emergency custody, a hearing will normally be held on the next scheduled juvenile court date. As in State courts, the issue at this hearing is whether the child's life and/or health will be in imminent danger if the child is returned home. If it is determined that the child will be in danger, the court will continue the child's placement outside of the home. If not, the child will be returned home until a full fact-finding hearing is held.

> Prior to the tribal court's fact-finding hearing, the parents can admit or stipulate to all or parts of the petition, just as they can in State courts. If they admit or stipulate, the tribal court can proceed to the dispositional stage without a hearing.
>
> If the parents do not stipulate, an adjudicatory or fact-finding hearing will be held, as provided by tribal law. The title of this hearing will vary from tribe to tribe. The purpose of the full fact-finding hearing is the same as in State courts; that is, to determine whether or not the alleged incidents occurred. If the petition is supported, it must be determined whether the court has jurisdiction based on the statutory definition of child abuse and/or neglect. The hearing is conducted according to procedures developed by tribal practice and laws, and may vary from tribe to tribe. Usually, the petitioner has the burden of proof and the parents, as the defendants, can challenge or rebut the allegations. Witnesses can be called and cross-examined, and evidence can be admitted. Tribal law dictates what standard of proof is required for a determination of child abuse and/or neglect. Since tribal courts have not yet developed elaborate evidentiary rules, an attorney may not be able to make the same objections in tribal courts as in State courts. Most tribal courts allow motions to dismiss the case at the conclusion of the petitioner's presentation of witnesses and evidence. If no motion is made or if the motion is denied, the parents then present their witnesses and evidence. The judge can question witnesses during any stage of the proceedings. Some tribal courts allow a motion to dismiss after all testimony has been given. If the motion is denied, the court makes a finding. If the petition alleging abuse and/or neglect is sustained, tribal courts usually proceed immediately to the dispositional hearing, or may place the child in an appropriate facility or allow the child to remain at home until the dispositional hearing is held. The court may also issue other orders after it makes its decision, including protective orders which direct a course of behavior for the parents or restrict some aspects of the parents' behavior. At the dispositional hearing, the tribal court, like a State court, is free to issue a variety of orders. The major problem is that most reservations, like most small towns, do not have many dispositional alternatives available (pp. 70-72).

These authors also note, however, in regard to dispositional alternatives, that the extended family is a flexible and useful resource that may not be as generally available to non-Indian courts. It should also be noted that dispositional alternatives are becoming increasingly available as part of the trend toward active self-government, as will be seen in later chapters.

For specific features, including tribal and judicial office addresses, trial and judicial organization, demographic and caseload data, court jurisdiction statements, support personnel and facility descriptions, interjurisdictional agreements, and tribal court procedures summaries, of the judicial

systems of 140 tribes, the National American Indian Court Judges Association has compiled a handbook of tribal court profiles. The second edition of this handbook, dated October 1982, is an update of the American Indian Lawyer Training Program's 1977 publication of 98 tribal court profiles. A listing of the tribes profiled is included in Chapter VII of this Report.

Resources for Tribal Legal Systems Development

Model Codes and Other Drafting Aids. A recently reprinted training text by the American Indian Law Center for Native American legal and social service professionals includes detailed recommendations for drafting children's codes adequate for assuming jurisdiction over custody or placement decisions under the ICWA. This text refers to another Center publication especially useful for tribal legislators, the Model Children's Code. The first edition of this model, written in 1976, was developed to provide a legally correct model that Native American tribes could use to enact child welfare laws that fulfill their legal, cultural, and economic needs. The more recent second edition was prepared after the passage of the ICWA and is, therefore, especially useful in drafting children's codes adequate for the assumption of jurisdiction under that Act.

Tupper and Borton report the results of the Muckleshoot Child Neglect Project's development of a social and legal system for neglect cases on the Muckleshoot tribal reservation in King County, Washington. Among the products of this effort was a model Youth-in-Need-of-Care code based on Indian values. This report also describes the tribal court system developed under this project to oversee child welfare cases.

The University of Montana Law Clinic has developed a model code for child sexual assault cases on Montana's seven reservations. Developed at the suggestion of the Montana Inter-Tribal Policy Board, this model code was formulated to meet the concerns expressed at public meetings in regard to the prosecution of child sexual assault perpetrators; the treatment of the victim, perpetrator, and their families; and the development of cooperative intergovernmental agreements to effect prosecution and treatment.

Resources for Court Staff Training. The American Indian Law Center has developed a number of training materials for tribal court judges, attorneys, and other court personnel to assist them in working with abused and neglected reservation children and their families.

One of the most comprehensive of these materials is the text mentioned earlier, which includes chapters on the role of court professionals, including the tribal judges, attorney/tribal advocate, law enforcement officer, and social worker, in handling child welfare cases, as well as thorough discussions of the various aspects of child maltreatment cases and tribal court operation under the ICWA. The Center has been involved for many years in developing training materials for Native American Child Welfare professionals, as evidenced by a 1977 report on training sessions conducted by staff attorneys and a law student from the Center on 10 representative reservations. These training sessions, for tribal personnel working with children, had the dual purpose of providing background in juvenile law and of providing tribes with the impetus to enact legislation to affect tribal jurisdiction and preserve

Indian values and traditions. The Center also produced three color slide-audiocassette training modules. One of these, which includes a 232-page manual, presents guidelines for conducting workshops on tribal management and children's rights and covers such topics as legal terminology, introduction to a juvenile code, the ICWA, the jurisdiction of a juvenile court, the Indian Civil Rights Act, relevant Constitutional issues, the hearing process, mandatory child abuse and neglect reporting, and development resources. Another slide presentation explains tribal procedures established for minor-in-need-of-care cases resulting from suspected child neglect. The third training audiovisual follows an abandonment case to illustrate the need for a tribal children's code and children's court to protect the rights of children.

Linkages reports two new training activities currently being undertaken at the Center, both of which focus on training legal professionals to handle child sexual abuse cases. A curriculum to prepare tribal court judges to handle these cases is currently being designed at the Center, according to the February 1986 edition of Linkages (p. 7). This curriculum, to be developed by the Center with the assistance of an advisory board consisting of both tribal law and child sexual abuse experts, will provide judges with background information on this problem; explore the issues inherent when children are witnesses/victims (such as competency to testify); and examine the issues concerning the defendant's legal rights. The need for this curriculum and other information on this subject was explained by Toby Grossman, AILC senior staff attorney, who noted growing concern over this problem on reservations and the issues compounding the tribal response to the problem: jurisdiction on reservations; severe lack of resources to handle perpetrators; limitations of Federal law enforcement protection; gaps in Federal and tribal law; and the limitations of tribal law enforcement.

To complement this project, the Center has also undertaken an Indian child abuse prosecution project which will develop methods for effectively prosecuting child abuse perpetrators while minimizing the trauma suffered by the Indian child victim during the prosecution process, as reported in the April 1986 edition of Linkages (p. 9). This project, administered by the Center and the Eight Northern Indian Pueblos Council for use in New Mexico's eight northern Pueblo courts, will produce a handbook to provide procedures and guidelines for prosecuting offenders and treating victims, and a manual to outline training staff techniques. Also, a Model Child Protection Team will be established during the project and technical assistance provided any Pueblo wishing to develop a team in its community.

As has been seen in recent years, there has been a great deal of legislative activity and emphasis on developing legal systems on reservations that both comply with Federal requirements and preserve Native American values. Perhaps one of the major incentives for this activity is the ICWA, which will be examined in the next chapter.

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CHAPTER III

THE INDIAN CHILD WELFARE ACT (ICWA)

The ICWA, enacted in 1978, represents a new era in the Native American response to the problems of child abuse and neglect, for as the capstone of the Federal policy of self-determination for Indians, it encourages tribal assumption of jurisdiction over cases involving the care and protection of Indian children residing on reservations, and permits tribal intervention in State court proceedings concerning placement of Native American children residing off the reservations. In this chapter, publications describing the events and conditions leading to the enactment of the ICWA, the text of the ICWA itself, judicial interpretations, articles concerning its impact, and discussions of the challenges for implementation with the resources available to meet those challenges will be reviewed.

Background

Thorne includes in his analysis of the ICWA, a discussion of the consideration leading to its passage. He cites the work of Task Force Four of the American Indian Policy Review Commission, authorized by Congress in the mid-1970s to study and submit recommendations concerning Federal policy toward Native Americans, as instrumental in outlining the need for what was to become the ICWA.

The Task Force Report, as Thorne notes, addressed a central question concerning the need for such legislation. Because both Indian and non-Indian systems are to act in the best interests of the child, what practical difference is there between the two in regard to Indian children? Thorne quotes the Task Force answer:

> "The difference is that these decisions are inherently biased by the cultural setting of the decisionmaker...when decisions are made by non-Indian authorities." (Thorne, p. 106, citing Task Force Four, Final Report to the American Indian Policy Review Commission, p. 79 (1976).) He also cites the Report's estimate that 25 to 35 percent of all Indian children were raised at some time by non-Indians in homes and institutions and the non-Indian perception that many Native American families were incapable of child-rearing. (Thorne, ibid.)
>
> Thorne also provides the statistics cited within the Report to illustrate the disproportionate likelihood that Indian children, as compared to non-Indian children, would be adopted or placed in foster care in non-Indian homes. These statistics, presented here in tabular form on a per-State basis, illustrate the very real probability at the time that Native American families would be broken up through out-of-home placement by State courts.

State	Proportion Adopted (by percentage)	Proportion in Foster Care
Alaska	460	300
Arizona	420	270
California	840	270
Idaho	*	640
Maine	**	1,910
Michigan	370	710
Minnesota	390	1,650
Montana	480	1,280
Nevada	*	710
New Mexico	*	240
New York	*	300
North Dakota	280	2,010
Oregon	110	829
Oklahoma	460	410
South Dakota	180	2,040
Washington	1,900	960
Wisconsin	1,760	1,330
Wyoming	*	1,040
Utah	340	1,500

*The figures on adoptions are too small to be statistically significant.
**There were 1,084 Indian children under 21 in Maine during 1974-1975; of these 0.4% were placed for adoption. Comparable adoption rates for non-Indian children not provided.

Thorne further cites two levels of abuse experienced by Indian children in non-Indian child welfare systems, as identified in the Report. The first is the wide discretion afforded in defining and determining parental neglect to permit the initial removal of the child; this evaluation process often involved the imposition of cultural and familial values at odds with the values held by the Indian family. The second is, when there was a real need for out-of-home placement, the frequent placement in non-Indian homes, far from the reservation and/or extended family, resulted in the deprivation of the child's tribal and cultural heritage.

As a tribal court judge, Thorne describes the impact upon the child of these practices:

> I have seen first-hand the results of children cut-off from their familial and cultural roots. They end up lost between two cultures, being accepted by either the Indian or non-Indian communities only with the greatest of difficulties. (Thorne, p. 115)

Other studies of the adverse consequences of social service and judicial misunderstanding of Native American culture leading to the remedy of the ICWA will be discussed in Chapter V. From a legal perspective, Miles also cites

the disproportionate placement of Native American children in foster care in California prior to the enactment of the ICWA. The Congressional response to these concerns is contained in the text of the ICWA itself, as outlined next.

Review and Judicial Interpretations of the ICWA

Thorne is also among the commentators presenting reviews of provisions and points of law in the ICWA. Among the fact sheets outlining generally its provisions are two informational brochures prepared by Michigan Indian Legal Services and the Indian Adoption Awareness Project of the Council of Three Rivers American Indian Center in Pittsburgh. Miles discusses the provisions of the ICWA as they impact upon juvenile dependency proceedings in California courts, and Foerster and Spearly's manual for child advocacy in Texas includes an appended summary of the ICWA. Lawritson provides an examination of the ICWA provisions with an analysis of those provisions that could be subject to judicial interpretation. It should be noted that the ICWA, as with most legislation, has points subject to judicial interpretation. The review to follow includes the State court cases interpreting the ICWA, as contained in the Clearinghouse database case subfile. However, this review of judicial opinion is by no means comprehensive, for the body of law interpreting the ICWA is continually expanding. Those interested in researching specific legal questions regarding the ICWA are urged to consult the Indian Law Reporter, a looseleaf service published by the Native American Rights Fund of the National Indian Law Library. In addition, ICWA case keynotes and analyses by Craig Dorsay, a Portland, Oregon, attorney and former Assistant Attorney General with the Navajo Department of Justice, are included in every edition of Linkages.

Baurley and Street also outlined the provisions of the ICWA. The following review is adapted from their outline with the addition of cases. The lines for State courts - Indian Child Custody Proceedings, may be found in the November 26, 1979, edition of the Federal Register (Vol. 44, p. 67584).

Legislative Intent. In terms of Federal legal history with regard to the Indians, the ICWA represents the capstone of the policy of self-determination, for it encourages the tribal assumption of jurisdiction over cases involving child care and protection. The Federal policy of self-determination for Native Americans residing on the reservation strengthens the concept of tribes as independent sovereign entities. Section Three of the ICWA makes clear Congressional intent in this regard by stating that:

> The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

Although "Indians" are specifically referred to throughout the ICWA, it should be noted that tribal jurisdiction over Native Americans is legally based upon domicile upon the reservation rather than race, which would be

constitutionally impermissible. Thus, removal of children from the reservation directly impacts upon tribal sovereignty and viability, since jurisdiction is based upon residence on the reservation. The question of the constitutionality of the ICWA's emphasis on "Indian" was addressed by an Oregon Court of Appeals in Angus v. Joseph, (No. 25245, Or. Ct. App., 12/8/82), in which 15-year old Native American parents filed a habeas corpus action for the return of their 1-year old child (Dorsay, Linkages, Feb. 1983). In rejecting the contention that the ICWA was unconstitutional as a denial of Fifth Amendment equal protection, the Court held that the United States Supreme Court had consistently rejected equal protection arguments in regard to laws addressing Native Americans. Since the laws affecting Indians are based on the tribes' political status, rather than on a racial classification, and the protection of the integrity of Indian families is a permissible goal rationally related to Congressional interest in meeting its fiduciary duties to the Indians, the ICWA meets Congressional standards.

Applicability. The ICWA applies to Indian children, defined as follows:

> "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe (§4(4)).

The ICWA applies when an Indian child is the subject of any State court proceeding concerning foster care, termination of parental rights, preadoptive placement, or adoptive placement; actions that may arise as the result of abuse or neglect. Standards set by the ICWA apply to State courts, except when other applicable Federal or State law provides the child with greater protection (§111).

The earliest court tests of the applicability of the ICWA centered upon the interpretation of its section defining its effective date, which states that:

> [N]one of the provisions of this title, except sections 101(a), 108, and 109, shall affect a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after the enactment of this Act, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child (§113).

In Matter of R.N. (303 N.W. 2nd 102 (S.D. 1981)), the Supreme Court of South Dakota affirmed the termination of parental rights of an Indian mother of her five children, and held that the final termination hearing was a continuance of an earlier termination proceeding and as such was not the subject of the ICWA. On October 2, 1978, the trial court, after terminating the parental rights of two fathers, ordered that the order terminating the mother's rights be held in abeyance for 1 year during which the mother was to obey the court's ruling as to her employment, home maintenance, alcohol consumption, and cooperation with the Department of Social Services. Under its own provisions, as cited above, the ICWA became effective on May 7, 1979. The Court found that the hearing held on December 10, 1979, in response to a

petition citing the mother's failure to meet the conditions of the order of abeyance, was a continuance and not a separate matter, and therefore, the ICWA did not apply.

A similar result was in Montana in Matter of T.J.D. (615 P.2d. 212 (Mont. 1980)); however, in E.A. v. State (623 P.2d 168 (Kan. 1982)), the Supreme Court of Alaska held that while the ICWA was not applicable to a termination proceeding because the hearing was held before its effective date, the ICWA would apply to subsequent proceedings in the same case held after the effective date, because the case had been remanded back to the trial court. An Eskimo mother and grandparents filed appeals for an order terminating her parental rights and placing her two children with a social service agency for adoptive placement. In finding that the lower court had failed to employ the proper standard of evidence under State law in considering the evidence against the mother, the Court held that the case should be remanded for further consideration at which time the grandparents' claim of adoptive preference under the ICWA would be considered.

In more recent ICWA cases, courts are considering the applicability of the ICWA to various persons and situations such as a non-Indian parent of an Indian child, foster parents of Indian children, non-Indian adoptive parents and internal family disputes. In Matter of the Adoption of Baby Boy L (643 p.2d 168 (Kan. 1982)), the Court held that the ICWA did not apply to adoption proceedings concerning the child of a non-Indian mother and Indian father where the child had never been in the care or custody of the father, so that the preservation of an Indian family was not at issue, and where the mother objected to transfer of the case to a tribal court. Similarly, Indian foster parents of Indian children were found not to be entitled to ICWA protections by the Oregon Supreme Court, which found in State ex rel Juvenile Department v. England (640 P.2d 608 (Or. 1982)) that state-licensed Indian foster parents were not entitled to intervene in the removal of an Indian child from their home, since the ICWA defines "Indian custodian" as one who has legal custody under State law. Because Oregon gives legal custody to the State social services agency, the foster parents did not qualify as Indian custodians. The Oklahoma Supreme Court found that the ICWA did not apply to non-Indian adoptive parents of Indian children in In re J.R. (No. 57, 394 (OK. Sup. Ct., 12/1/82) per Dorsay, Linkages, Dec. 1982), where the Court rejected the mother's attempts under the ICWA to invalidate the removal of the child from her home because the ICWA defines parents entitled to its protections as either biological parents or any Indian adoptive parent and does not include non-Indian adoptive parents.

Dorsay, in discussing the applicability of the ICWA to internal family disputes, notes that two State courts have decided the question differently (Linkages, Dec. 1982, p. 12). The Montana Supreme Court in In re Bertelson (617 P.2d 121 (1980)) held that the ICWA applies only where a Native American child is being placed in a foster or adoptive home or institution, and not to internal family disputes, while the Alaska Supreme Court held in A.B.M. v. M.H. and A.H. (No. 2567, Sept. 24, 1982) that the language of the ICWA is clear and the ICWA can be applied to internal family disputes. In A.B.M., the unmarried Indian mother consented to the adoption of her child by her sister and brother-in-law, and later revoked her consent and petitioned for the return of the child using procedures described in the ICWA. The Court in that case found that while one of the main aims of the ICWA was the preservation of

the child's cultural heritage, which could be lost due to agency bias, and that the child's heritage would be preserved in the natural mother's sister's home, the language of the ICWA is nonetheless clear and internal family custody disputes are not excluded from ICWA coverage.

Purpose of the ICWA. The ICWA was enacted in recognition of the problem of the unwarranted removal of Native American children from their homes, as reflected in its preamble: "To establish standards for the placement of Indian children in foster or adoptive homes, [and] to prevent the breakup of Indian families." In order to carry out this purpose, the ICWA has two main aims: (1) to place jurisdiction, whenever possible, over Native American child custody proceedings with the appropriate tribes, and (2) to regulate State court proceedings involving the custody of Indian children by establishing certain safeguards. As noted earlier, some tribes retained jurisdiction over their reservations in many areas, while other tribes were in States where jurisdiction had been assumed by the State under either Public Law 280 or specific Federal legislation.

Jurisdiction under the ICWA. The ICWA vests exclusive jurisdiction over Indian child custody proceedings in the tribal court, as follows:

> An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled with the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child (§101(a)).

Tribal court jurisdiction under the ICWA was affirmed by an Arizona Court of Appeals in Matter of Appeal in Pima County Juvenile Action No. S-903 (130 Ariz. 202, 636 P.2d 167 (Ariz. App. 1981)), where it held that the lower court lacked jurisdiction inasmuch as the Fort Belknap tribal court had exclusive jurisdiction under the ICWA, and that even if the State court had concurrent jurisdiction, it should have declined exercise. The 15-year old mother, a member of the Assiniboine tribe of Montana, had executed a voluntary relinquishment for adoption in Nevada but withdrew the relinquishment 6 months later after the child had been placed in a non-Indian home in Arizona. The Court found that the tribal code had exclusive jurisdiction over this case since the domicile of the child is that of the mother until a new domicile is legally acquired.

Even if the child does not reside or is not domiciled on the reservation, the tribal court has authority to take action, although a different procedure is employed. When the child lives off the reservation, the parent, an Indian appointed as custodian, or an Indian child's tribe petitions the State court to turn over jurisdiction to the tribal court. Once petitioned, the State court must transfer the case to the tribal court unless either the parent objects or good cause to the contrary is shown (§101(b)).

In tribes where the State has jurisdiction over child custody proceedings under prior Federal law, the tribe must petition the Secretary of the Interior to reassume jurisdiction over those matters. The petition must set out in

detail a suitable plan under which the tribe intends to exercise its jurisdiction. The Secretary must consider the petition and either approve or disapprove the plan, using decision-making criteria outlined by the ICWA. The plan may be either fully or partially approved; partial approval could include reassumption of jurisdiction only over certain actions or geographic areas. Notice of approval is then published in the Federal Register, and the affected States must be notified, with reassumption completed 60 days after publication. If the Secretary disapproves the petition, the ICWA mandates that technical assistance be provided to the tribe to perfect the petition (§108).

Under another provision of the ICWA, tribes may also obtain jurisdiction over a proceeding by reaching an agreement with the State. Such agreements must be made on a case-by-case basis (§109).

Rights of the Parties in Proceedings under the ICWA. In State court cases involving Indian children, the ICWA establishes procedures to protect the rights of the child, his or her parents, and the tribe. In all involuntary foster care and termination of parental rights actions, the Indian child's custodian as determined by tribal law, custom, State law, or the person to whom temporary physical care, custody, and control have been transferred by the parent of such child (§4(6)) and the child's tribe have the right to intervene at any point in the proceedings (101(c)). Also, all parties have the right to examine all reports, testimony, witnesses, and exhibits upon which the court's decision may be based (§102(c)).

In voluntary foster care or termination of parental rights cases brought in State court where the court knows or should know that the child is Indian, the court must notify the Indian custodian and the child's tribe, using formal notice procedures prescribed by the ICWA. The notice must describe the action pending in State court and advise of the right to intervene. If the court cannot determine the child's tribal affiliation or the identity of the child's custodian, it must notify the Secretary of the Interior, who then has 15 days to locate the child's tribe and custodian and notify them. No action is permitted in a pending proceeding until 10 days after the custodian and tribe are notified, and they have the right to request further extension (§102(a)).

The provisions of the ICWA concerning notice to the child's tribe were interpreted by the South Dakota Supreme Court in In re S.Z. and C.Z. (No. 13403, Oct. 20, 1982; Dorsay, Linkages, Feb. 1983). In that case, the trial court had terminated the rights of a Rosebud Sioux mother and non-Indian father, and both parents had waived their right to counsel and stipulated that they did not want the case transferred to tribal court. The affidavits sent to the Tribal Chairman indicated that they were notice to the tribe under the ICWA, but did not mention the tribe's right to intervene. Although the lower court did grant the parents' petition after termination to set aside the decree because the notice provisions of the ICWA had not been met, the Court held that the notice provisions were substantially complied with and that the transfer to tribal court after the parents withdrew their objection was valid.

In at least two areas, the ICWA guarantees rights to Indian parents in involuntary removal and termination of parental rights actions not guaranteed non-Indian parents under the U.S. Constitution. The ICWA provides for the right to appointed counsel for indigent Indian parents (§102(b)). The

argument that the due process provisions of the 14th Amendment demand appointment of counsel for indigent parents in termination proceedings was expressly rejected by the U.S. Supreme Court in Lassiter v. Department of Social Services of Durham County, North Carolina (101 S.C. 1684 (1981)). However, State laws may mandate the appointment of counsel in such cases, as does the ICWA.

The standard of evidence to be used in deciding termination is also higher under the ICWA than is constitutionally required. A State court considering the severance of the parental rights of Native American parents must find, beyond a reasonable doubt, that "continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child" (§102(f)). The "beyond a reasonable doubt" is highest standard of evidence; its use is generally limited to criminal matters. The U.S. Supreme Court found in a New York State case, Santosky v. Kramer (102 S.C. 1388 (1982)), that the Constitution requires that the lowest standard of proof, "clear and convincing," be used by courts considering the termination of parental rights, although State laws had permitted termination based upon the preponderance of the evidence, the lowest standard of evidence. The ICWA also provides that clear and convincing evidence that continued custody would harm the child be shown in involuntary foster care placement proceedings (§102(c)).

At least one court has found that the burden of proof for the termination of parental rights of an Indian mother had not been met in State court, as seen in In re G. (No. DR 80-284 (Dist. Ct. McKinley County, NM, Jan. 26, 1983), Dorsay, Linkages, June 1983). In that case the Court found that the ICWA requires a showing beyond a reasonable doubt that: (1) the child is neglected or abused; (2) diligent efforts by the social service agency to provide services and reunify the family had been made and failed; and (3) continued custody of the child by the parent is likely to result in serious harm to the child. In so finding, the Court denied the termination petition and ordered that social services be provided to reunite the family.

In three other State court cases, the reviewing appeals courts referred to the "reasonable doubt" standard of the ICWA, but found that the evidence presented met that standard. The Supreme Court of South Dakota found in Matter of J.L.H. and P.L.L.H. (316 N.W. 2d 650 (1982), remand at 299 N.W. 2d 812; Dorsay, Linkages, Sept. 1982) that the Indian mother's parental rights were terminated based on evidence beyond a reasonable doubt that her conduct was likely to cause serious emotional and physical injury to the child, and accepted the testimony of a social worker as an expert witness under State law. In Matter of Fisher (643 P.2d 887 (1982)), a Washington State Court of Appeals found beyond a reasonable doubt that it was in the best interests of the child to terminate the Native American father's parental rights, accepting the testimony of two expert witnesses who testified in favor of termination based upon their experience and training in dealing with Indians and Indian problems. The Supreme Court of Minnesota, in Matter of R.M.M. III (316 N.W. 2d 538 (1982)), upheld the trial court's determination, using State standards, that the Chippewa mother's conduct was likely to cause serious emotional and physical injury to the child.

A pre-ICWA South Dakota Supreme Court case, Matter of V.D.D. (278 N.W. 2d 1984 (1979)), illustrates the difference the ICWA has made in State court termination proceedings involving Native Americans. In that case, the Indian

mother was contesting the termination of her parental rights to four of her 12 children, arguing that the State statute was unconstitutionally vague, especially in regard to the term "proper care," taking into account cross-cultural differences, and that a less restrictive alternative to termination had not been employed by the lower court. The Court rejected these arguments, holding that parents of whatever race or creed simply cannot do with their children as they please, that the statute provided standards by which a person of average intelligence can regulate his or her conduct, that every effort to work with the mother to correct the situation had been rejected by her, and that the best interests of the children warranted termination.

Voluntary Proceedings and Consent Issues. Because voluntary proceedings and consent issues are generally not a part of child abuse and neglect cases, the provisions of the ICWA in regard to those actions will not be discussed in detail here. As in cases involving involuntary removals of Indian children, voluntary proceedings and adoption cases concerning Indian children are governed by provisions of the ICWA designed to protect the interests of the parent, child, and tribe. The ICWA includes provisions to assure that consents to adoption are freely given, well understood, and revocable within certain time limitations. Voluntary placements in foster care are also protected, with the addition that such placements can be withdrawn at any time. When parental rights have been voluntarily terminated, such consent may be withdrawn at any time until the final decree is issued, and the ICWA also provides grounds for challenging such final decrees (§103).

Placement Preferences. Since the primary aim of the ICWA is the preservation of Indian families and, therefore, the child's cultural heritage, it also provides for placement preferences when the child cannot be returned to his or her parents, such as when parental rights are terminated, or when he or she is placed in foster care. Under the ICWA, State courts in making adoptive placements of Indian children must, in order of preference and absent good cause to the contrary, place the child with a member of the child's extended family, then to another member of the child's tribe, and finally to other qualified Indian families. In foster care placements, the court must consider the least restrictive setting most nearly approximating the original family and meeting the child's special needs; place the child within reasonable proximity of the reservation; and absent good cause to the contrary, direct that efforts be made to place the child with Native American caretakers, or in an institution approved by the tribe. These placement preference provisions also allow alteration by the child's tribe, consideration of the wishes of the child or his or her custodian, and consideration of the consenting parent or custodian's desire for anonymity (§105).

A State court entering a final decree of adoption of an Indian child must forward a copy of the decree along with information on the child's tribal affiliation, the names and addresses of the child's biological and adoptive parents, and the agency that handled the case, and retains these files, as well as a copy of the possible confidentiality affidavit filed by the biological parent (§301). When the adopted Indian child reaches age 18, he or she may apply to the State court that entered the final decree of adoption or to the Secretary of the Interior for information concerning his tribal affiliation, biological parents, and other information needed to protect his or her tribal relationship. If a confidentiality statement was filed by the biological parents, the Secretary of the Interior shall certify to the tribe the child's eligibility for membership (§107).

Impact of the ICWA

The effect of the ICWA upon Native American children and families has been the subject of much discussion as legal and social service professionals and concerned commentators, both Indian and non-Indian, learn to work within its guidelines.

In two back-to-back articles in the September 1980 edition of Social Work, two commentators present differing views on the impact of the ICWA. Fischler expresses concern that the ICWA subordinates children's rights to the rights of the parents and tribes with provisions impeding child protective services. Blanchard and Barsh counter this concern, citing the paramount importance of children in Native American cultures and the impact of the ICWA as requiring a re-examination of professional attitudes in social work toward Native American families and children. Miller, Hoffman, and Turner support this latter view and call for social workers, especially those working with urban Native Americans, to understand and work within the spirit of the ICWA.

Thorne reflects, from personal experience as a tribal court judge, upon both successes and failures encountered in tribal-State child welfare cases under the ICWA.

> The ICWA is a step in the right direction of correcting past abuses. Like all laws intended to remedy social ills, however, compliance with simply the letter of the law falls short of actually solving the problem. Compliance is the minimum that should be expected, or in fact, demanded. Solution of the problem, however, awaits the spirit behind the law.
>
> Unfortunately, the ICWA has been less effective than its potential foretold. The Indian child now is sometimes lost behind the actions of intractable bureaucrats and forgotten by officials wrangling over jurisdictional disputes. There are agencies which refuse to provide needed services to Indian children when tribal courts are the decisionmakers about a child's welfare, and there are tribal courts which refuse jurisdiction because of the fear that they won't be able to provide necessary services for a troubled family. As a judge in various tribal courts, I have seen that the ICWA can indeed shed light and reveal hope for an Indian child's future which is so long overdue (Thorne, pp. 123-124).

The American Indian Law Center, in its text for tribal child welfare practice, also discusses the problems of automatic assumption of tribal jurisdiction over Indian children when tribal resources to meet the child's special needs are not available (pp. 71-72). To fully meet the spirit of the law, as Thorne urges, Native American communities are addressing the challenges of implementation.

Implementation of the ICWA

Issues for Implementation. A number of commentators have outlined the issues inherent in realizing the goals of Indian family preservation and return of Native American children to their cultural heritage under the ICWA. Dietrich focuses on implementation issues for social services and, based on a survey of Indian child welfare professionals, offers recommendations for implementation that include interagency coordination between tribal and State social service providers; assignment by urban social service agencies of cases involving Native American children to selected specially trained workers; social service involvement, as assisted by urban Indian organizations, in transfer proceedings and the clarification of social service policy regarding ICWA cases. Blake, in testimony before a Congressional committee in 1983, urged those involved in State court proceedings be educated as to ICWA requirements; that a central State repository of court records of the placements of Indian children, as required by the ICWA, be realized; that funding for implementation, monitoring, and enforcement, be increased; and that the ICWA itself be amended to require notification to the tribe when a Native American child is first placed, in out-of-home care, rather than notification upon the initiation of court proceedings.

The need for the mutual cooperation of State courts and child protective service agencies with tribal governments is a primary implementation issue. Miles points out that although the California tribes now may assert jurisdiction over their children, many Indian children remain in State custody because total retrocession from State jurisdiction is a lengthy process; some tribes may assume jurisdiction on a case-by-case basis or concurrently under tribal-State agreements; smaller, less formally organized and economically dependent tribes may not choose to assert jurisdiction; and many of California's Indian children permanently reside off reservations in urban centers and, thus, will continue to be subject to State jurisdiction. The National Indian Child Abuse and Neglect Resource Center, in a 1980 statement, summarized the reasons State courts may be reluctant to accept tribal jurisdiction:

- In order to be eligible for Federal reimbursements, aid to families with dependent children, foster care (AFDC-FC) homes and day-care facilities must be licensed or approved.

- State governments have been reluctant to contract with tribal governments for the provision of services because they lack the power to take tribal governments to court to recover funds which might be spent outside the terms of a contract or without proper documentation.

- Where Title II is involved, States are reluctant to pay the 25 percent local share necessary to earn the 75 percent Federal share.

- State governments do not have the power to tax Indians' real or personal property on reservations, nor can States tax Indians' income earned on reservations. Accordingly, States have often argued that they cannot afford to pay the local share for services to reservation Indians. This

attitude should be contrasted with the stated legal responsibility to tribes (or segments thereof) within their borders. Indians are citizens of the State in which they reside, and are entitled to share in its benefits.

- In Public Law 280 States, reservations reassuming jurisdiction of Indian child custody proceedings must petition the Bureau of Indian Affairs (National Indian CAN Resource Center, p. 3).

This reluctance, based primarily on financial considerations, points to another issue important to the implementation of the ICWA: lack of tribal responses in providing services to abused and neglected Indian children and their families. Myers is among those urging Federal financial assistance for tribal court and social service development. He also acknowledges Federal support assistance, such as the establishment of the Judicial Services Branch of the BIA to help in the development of tribal legal systems.

Resources for Implementation. Resources, both in the form of information and financial assistance, are and are becoming available to tribes seeking to reassert jurisdiction over their young members. The American Indian Law Center's text provides a step-by-step summary of tribal procedures required to successfully intervene in State court proceedings involving Indian children and noteworthy bibliographic references for additional information. The Arizona State Department of Economic Security produced, in 1980, a resource directory to information and services needed by the tribes in that State.

In recent editions of Linkages the notice and requirements of various Federal grant programs for tribal child welfare services have been announced. Grant programs under Title II of the ICWA and under the Family Violence Prevention Services Act (Title II of Public Law 98-457, the Child Abuse Amendments of 1984) are two Federal programs designed to assist tribes and other Native American organizations in developing systems, not only adequate to assert jurisdiction under the ICWA, but also to assure Indian children and families access to social, health, and other services.

The Federal-tribal partnership and the resources available through the interaction of these governments under the ICWA is one aspect of the efforts to identify, treat, and prevent the abuse and neglect of Native American children. Other State, Federal, and tribal resources, as established by law, for this purpose are reviewed in the next chapter.

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CHAPTER IV

BEYOND THE ICWA: OTHER FEDERAL AND STATE LAWS AND POLICIES CONCERNING THE PROTECTIVE SERVICES FOR NATIVE AMERICAN CHILDREN

While the ICWA represents a major milestone in Federal policy with regard to Native American children, addressing the problems of child maltreatment goes beyond the assertion of jurisdiction over these cases. To identify, treat, and prevent family dysfunction within their communities, tribes must look to the development of child protective systems that will provide for identification and intervention into their troubled families.

Two studies, one in 1975 by the Center for Social Research and Development of the University of Denver and the other prepared the next year by the Office of Human Development of the then U.S. Department of Health, Education and Welfare, examined the provision of child welfare services, including protective services, to Native American children and their families. Noting that both of these studies were conducted a decade ago and before the enactment of the ICWA, this chapter will use the historical information they contain to present background into Federal and State laws, programs, and policies relevant to providing child protective services to Native American children today. The complex and often uneasy relationship between tribal and Federal/State governments that impacts on the provision of child protective services is rooted in the laws and policies preceding the continuing Federal policy of self-determination and, therefore, these laws and policies remain relevant. However, it should also be noted that Federal and State governments, as well as tribal authorities, are actively pursuing the goal of child protection and thus positive developments in Federal programs and policies are increasing at a rapid pace. While no comprehensive study of current child protective services practice with regard to Native Americans has yet been reported, information on both new and revitalized Federal/State programs affecting Indian children and families troubled by abuse and neglect will also be presented in this chapter.

Federal Laws, Programs, and Policies

Background. The University of Denver study, which combined legal research and an on-site review of child welfare services on 10 reservations, provides an extensive discussion of the problems encountered in providing child welfare, including protective services in Indian reservations. Its discussion of the provision of public services by tribal governments provides an outline for understanding the responsibilities of Federal agencies toward Indian children. Initially, the Bureau of Indian Affairs was solely responsible for Federal programs on Indian reservations, with the establishment of the Office of the Commissioner of Indian Affairs in 1832. Under the Snyder Act of 1864, the BIA had full discretion to implement virtually all programs dealing with Native Americans in almost any area of government. These programs were administered solely by BIA employees. The Indian Reorganization Act or Wheeler-Howard Act of 1936 established in Federal law, guidelines and procedures for the reorganization of tribal governments, which had previously been governed in a variety of ways, according to the traditions and preferences of the individual tribe. Also under this Act, the first direct funding by the Federal Government to tribal corporations began with the Indian Revolving Loan Fund for

economic development. In 1954, Congress transferred responsibility for the provision of medical services on reservations from the BIA to the U.S. Public Health Service. Thus, the Indian Health Services (IHS), an agency independent of the BIA, assumed responsibility for reservation health care and appropriations for Indian health needs increased dramatically in the following years, beginning with an immediate two-fold $21 million increase. In the 1960s, a variety of Federal agencies began service delivery on reservations and their domestic assistance programs channeled even greater funding toward Native American programs. In 1975, the Indian Self-Determination Act was enacted, which requires the BIA or IHS, when requested by tribes, to contract directly with tribes to administer their programs.

The University of Denver report also discusses the importance of the Indian Civil Rights Act of 1968 in assuring constitutional protections for Native Americans residing on reservations. While of greatest importance in the context of tribal court criminal prosecutions of child abuse, its assurance of constitutional guarantees should also be noted in regard to other civil child protective matters.

The 1976, OHDS report on the status of Indian child welfare also chronicles the developments in Federal-tribal efforts for child welfare service delivery. A major point of both of these reports is that the BIA no longer is the exclusive service provider on reservations and that tribes may contract directly with the variety of Federal agencies overseeing child welfare-related programs.

Present Federal Programs for Native Americans

Child Protective Service Delivery. The American Indian Law Center's text for tribal child welfare professionals lists the Federal laws and their programs of greatest interest to tribes seeking to develop their child protective service capabilities, in that this Federal legislation affects Indian families. These measures, their dates of enactment, administering agencies, and provisions of importance for child protection include the following:

- Child Abuse Prevention and Treatment Act (CAPTA) of 1974 (Public Law 94-247), as administered by the National Center on Child Abuse and Neglect (NCCAN) of the Department of Health and Human Services (DHHS), authorizes demonstration and research grants for the prevention, demonstration, and treatment of child abuse and neglect.

- Child Abuse Prevention and Treatment and Adoption Reform Act (CAPTARA) of 1978 (Public Law 95-266) amended CAPTA and is thus administered through NCCAN. Among its purposes is to promote the healthy development of children who would benefit from adoption by facilitating their placement in adoptive homes. This measure requires the drafting of model State adoption legislation and procedures.

- Social Security Act, Title XIX, authorized the Medicaid Program in 1965. Administered by DHHS, this program provides medical assistance to those, including children, eligible for direct financial assistance under existing Social Security Act programs.

- Social Security Act, Title XX, authorized Special Service Programs in 1975. Administered by the Administration for Public Services, Office of Human Development Services (OHDS), DHHS, the programs that may be funded under this title include those for the protection of children and handicapped adults from abuse, neglect, and exploitation. Among the services offered by States under this Act are day care, foster care, and homemaker/parent aide type programs.

- Social Security Act, Title IV-A, established the Aid to Families with Dependent Children (AFDC) program in 1936 under the Office of Family Assistance (OFA) of the Social Security Administration (SSA), DHHS. This program encourages care of eligible dependent children in their own homes and is administered by the States with a 50 to 83 percent reimbursement by the Federal government depending upon the State's per capita income.

- Social Security Act, Title IV-B, authorized in 1935 Child Welfare Services as administered by the Administration for Public Services (APS), OHDS, DHHS. Public social services which supplement or substitute parental care and supervision under this Title are to: prevent, remedy, or assist in the solution of problems which may result from child neglect, abuse, or exploitation; protect or care for homeless, dependent, or neglected children; protect or promote the welfare of children of working mothers; and otherwise protect and promote the welfare of children, including strengthening their own homes when possible, or, where needed, providing adequate out-of-home care. To actuate these purposes, States can provide services that include child protective and health-related services, family counseling, homemaker and child care services, and emergency shelter care. All children are eligible, regardless of the social and economic status of the child or family.

- Adoption Assistance and Child Welfare Act of 1980 (Public Law 96-272), enacted in 1980 and administered by DHHS, amended AFDC, Title IV-B, and other Social Security Act programs. This Act is aimed at establishing a program of adoption assistance, strengthening the program of foster care assistance for needy and dependent children, and improving child welfare social services and AFDC programs. It restructured SSA programs for the care of children removed from their homes, modified foster placement practice by emphasizing permanency planning, and created a new program of Federal aid for the adoption of children with special needs. In its provisions directly affecting Native American children, it authorizes the Secretary of HHS to make direct payments under Title IV-E to Indian tribal organizations. These organizations must develop a plan for child welfare services to be eligible for direct funding.

Other Federal legislation listed as directly affecting Indian families are the Juvenile Justice and Delinquency Prevention Act of 1974, as amended in 1977 by Public Law 95-415; the Social Security Act, Title XVI, Supplemental Security Income (SSI); and the SSA's Titles IV-A and IV-C, the Work Incentive Program (WIN).

The major policy goals, expressed in the 1976 OHDS report mentioned earlier, were increased tribal involvement in the planning and delivery of child welfare-related social services; greater study and recognition of inconsistencies between tribal culture and non-Indian social work practice; placement of Indian children in Indian adoptive and foster care homes; and the commitment to resources to meet the unmet needs of Indian children and families. With the encouragement and resources of Federal laws, policies, and programs, especially those of the past decade as seen above, tribes are continuing to develop child welfare and protective service systems to meet these goals. Casey Wichalacz, the Deputy Associate Commissioner for the Children's Bureau (DHHS), reviews these changes:

> Considerable progress has been made over the past 10 years in the field of Indian child welfare. Most significantly the Indian Child Welfare Act, the Adoption Assistance Act and the President's January 1983 Statement of Indian Policy have established a framework which can directly and positively benefit Indian children. We have seen changes in a system. The challenge now is to use the policy framework we have gained to bring about concrete improvements for Indian children. (Linkages, Dec. 1985, p. 5.)

The Future of Federal Policy Concerning Native American Child Maltreatment. In a 1985 letter to various Federal agencies, Nancy Tuthill, Director of the American Indian Law Center, outlined a number of issues that remain in meeting the goal of protecting Native American children from abuse and neglect. At the core of these concerns are that responsibilities, in any Indian child abuse or neglect case, are shared by at least five disciplines (education, social service, health care, law enforcement, and courts) from a number of governmental bodies and agencies (tribal, State, county, BIA, IHS, FBI, U.S. Attorney's Office, and Federal District Court). Lack of a clearly defined authority to act, aggravated by caseloads beyond what its staffing and funding can handle, often causes each agency in turn to pass responsibility to another. This results in a service void to Indian children at a time when they are most in need. (Linkages, Oct. 1985, p. 13.)

To provide a focus to this complex situation, Ms. Tuthill posed a series of guidelines:

- Should there be uniform policy among service providers in education on how to recognize the characteristics of child abuse and neglect?
- Which mandatory child abuse and neglect reporting law should be enforced?
- Should there be uniformity among service providers on the proper procedures in investigation and gathering of evidence in suspected cases of child abuse and neglect?
- Who will provide the victim with medical and psychiatric treatment?
- Who will provide the perpetrator with psychiatric treatment?
- How will the mandatory reporting laws be enforced?

- Under what law will the perpetrator be tried?

- What type of child abuse should the U.S. Attorney prosecute?

- In the case of sexual abuse against an Indian child who resides on a reservation, should the U.S. Attorney prosecute under the Major Crimes Act 18 U.S.C. 13?

- Should the tribes be encouraged to prosecute the perpetrator, if the U.S. Attorney's Office fails to secure an indictment?

- If the evidence is not properly gathered by the tribe, BIA, IHS, or FBI, how will the U.S. Attorney's Office secure an indictment?

- If there is no uniform procedure in reporting requirements, how will the U.S Attorney's Office be notified? (Linkages, ibid.)

Among the responses to this letter was a meeting in December 1985 with Dodie Livingston, Commissioner of the Administration for Children, Youth, and Families, and Lynn Engles, Commissioner of the Administration for Native Americans.

> "The tone of the meeting," says Ms. Tuthill, "was encouraging. The Commissioners voiced an interest and willingness to work with other agencies to help provide coordinated protective services to Indian children. It was also agreed that the involved issues will be put before the newly created Indian child welfare subcommittee of the National Center on Child Abuse and Neglect." (Linkages, Feb. 1986, p. 1.)

As mentioned in the introduction to this Report, NCCAN's Advisory Board Subcommittee on Indian Child Welfare has already begun its work. Other recent Federal developments in working with tribes and Native American organizations for child protection include:

- A cooperative effort by BIA and DHHS to survey the number of Indian children in foster care, gauge the impact of the ICWA and direct Federal funding to tribes under Title IV-B of the SSA, and examine factors that have contributed to good intergovernmental relations for Indian child welfare. (Linkages, Dec. 1985, p.5.)

- The passage by the Senate on December 5, 1985, of Senate Bill 1818. This proposes amending the Major Crimes Act (18 U.S. Code 1153) to make sexual molestation of a minor within Indian country a Federal offense, when the offense is committed by an Indian. (A non-Indian guilty of sexually molesting a minor on a reservation is subject to State laws and penalties.) Section 1818 has been joined by a companion bill, House Bill 3826, of the same intent. This latter bill, which was introduced into the House on November 21, 1985, by Congressman Boucher, has been referred to the House Subcommittee on Criminal Justice. Hearings to obtain testimony on H 3826 were held on January 29, 1986.

A primary impact of making child sexual abuse on reservations a felony, would be to increase the penalties imposed, and provide treatment for Indian offenders. At present, such Indian offenders are tried in tribal court, where punishments are limited to maximums of 6 months imprisonment and/or fines of $500. In addition, rehabilitative or treatment resources for sexual abuse perpetrators are generally not available in Indian communities. (Linkages, Feb. 1986, p. 4.)

These are just two of the Federal initiatives in response to Federal policy changes. Additional initiatives, research, as well as tribal programs funded under Federal auspices, will be reviewed in Chapters V and VI of the Report, respectively.

State Laws and Systems Affecting Native American Children

As discussed in the Introduction to this Report, States derive their jurisdiction over Native Americans and child protection matters from Public Law 280, enacted in the 1950s. Further discussion of the legal and jurisdictional complications arising from Public Law 280 may be found in the University of Denver report. Despite President Reagan's call, in his statement on Indian policy in January 1983, for repeal of this legislation, Public Law 280 has not yet been expressly repealed. However, in light of the Federal policy of self-determination, the ICWA, and the general direction of placing child protection matters within the realm of tribal jurisdiction, States are beginning to recognize both the authority of tribal organizations and the need for understanding Native American culture in providing protective services.

State Laws. In a review of State child abuse and neglect laws in force in 1984, Younes found that some States view tribal courts and reservation child protective systems as equal partners in child protection. She noted that, in the general population, when parents are unable or unwilling to care for their children, that care is to be provided by the State. Thus, State juvenile courts, social service departments, and other child welfare agencies have the responsibility for those children in the general population who have been abused and neglected. State laws that specifically refer maltreated Native American children to their tribes are formally acknowledging the tribe's responsibility for Native American children as equivalent to the State's responsibility for non-tribal children.

State legislatures, in slowly increasing numbers, are beginning to recognize tribal authority over Native American children and families, as seen in some recently enacted State child abuse and neglect laws. Some of these child protection laws are also urging social workers to consider cultural practices in working with minority populations, an indication of the recognition of the right of all Native American parents to practice their own child-rearing beliefs.

For example, tribal dominion over Native American children who might be in need of care and protection is specifically recognized by the Wisconsin State Assembly in that State's child abuse and neglect reporting laws. Doctors, nurses, teachers, social workers, police officers, and others required by law to report suspected instances of child abuse and neglect are instructed to make those reports immediately to the tribal government, if the child is a tribal member.

Should the sheriff or police departments receive an abuse report concerning a Native American child, they too are instructed to refer the report to tribal authorities.

The Wisconsin Legislature further illustrates its view that tribal governments are equal partners with State agencies in child protection, by its instruction to county social service agencies to cooperate with Native American police, courts, and tribal governments to "prevent, identify, and treat child abuse and neglect," [WISC. STAT. ANN. Sec. 48.981 (3)].

In New Mexico, when a Native American child is ill, injured, abandoned, or otherwise endangered and therefore taken by law enforcement officers into protective custody, that State's Human Services Department is directed to give notice of the child's removal to "the agency of the appropriate Indian tribe in accordance with the Indian Child Welfare Act of 1978." [N.M. STATE. ANN. Sec. 32-1-22 (C) (1981)]. This official acknowledgement of the ICWA and the authority it gives tribes over Native American children is an important step in realizing the goal of tribal jurisdiction over member children and families.

Kansas also has recently singled out cases affected by the Indian Child Welfare Act as special. In the general population, when judicial intervention is needed to provide protective services to children and families, State court codes grant jurisdiction over those cases to State Juvenile courts. In Kansas, this granting of jurisdiction is given to juvenile courts "except in those instances when the Indian Child Welfare Act of 1978 applies." [KAN. STAT. ANN. Sec. 38-1503 (a) (Supp. 1984)]. Thus, Kansas lawmakers instruct their courts to remember that tribal courts have jurisdiction over Native American children in need of services.

California's child welfare law implied the right of Native American parents to rear their children as they see fit, as the State's welfare code reminds social workers that "culture...child-rearing practices and beliefs which differ from general community standards shall not in themselves create a need for child welfare services unless the practices present a specific danger to the physical or emotional safety of the child." [CAL. WELF. & INST. CODE Sec. 16509 (West Supp. 1985)]. With this provision, the California State Assembly indicates that actual jeopardy, not personal or community beliefs, is the standard for social service intervention into the home.

Colorado also urges those investigating reports of child abuse and neglect to take into account "accepted child-rearing practices of the culture in which the child participates." [COLO. REV. STAT. Sec. 19-10-103 (1)(b) (1978)]. Thus the standard set for the determination of whether a child is dependent, neglected, or abused in Colorado depends upon the beliefs and practices of the community in which the child resides. This implies that Native American communities, not the State, have the right to determine the yardstick by which maltreatment of children is measured.

The significance of the legislative provisions cited above is that State lawmakers are beginning to officially recognize the authority and autonomy of tribal governments and their member families over Native American children. These laws are signals to tribal governments to confirm that they, not the States, have the right to responsibility for taking care of their own children.

State Indian Child Welfare Acts. Another State legislative indication of State recognition of Indian concerns in regard to child welfare is the enactment of State Indian Child Welfare Acts such as the Nebraska legislature's passage on April 11, 1985, of the Nebraska Indian Child Welfare Act (see Linkages, Oct. 1985, p. 12). This Act restates Federal ICWA provisions and definitions regarding State responsibilities in Indian child welfare matters, meeting the concern that legal personnel in rural areas of the State, where copies of Federal laws are not routinely available, were not aware of those parts of the ICWA that differ significantly from general Nebraska statutory law. Further, this Act amends 26 State provisions regarding child welfare and protection to include reference to the Nebraska ICWA. As with Federal/tribal child protection initiatives, tribal actions in response to State actions will be reviewed in later chapters of this Report.

Tribal/State Agreements. Another indication of State recognition of tribal authority is found in tribal/State agreements that establish intergovernmental partnerships. One such recent agreement, reported in the August 1985 edition of Linkages, illustrates how tribal and State governments can work together for child protection. Signed on May 3, 1985, this agreement between the Lummi Indian Reservation and Whatcom County, Washington, delineates procedures to be followed for the prosecution of child sexual abuse cases occurring on the reservation. Such agreements are a step toward actuating the intent of self-determination and the goal of effective child protection for all children.

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CHAPTER V

RESOURCES FOR WORKING WITH NATIVE AMERICAN CHILDREN AND FAMILIES

Laws and governmental policies, whether tribal, Federal, or State, are but the framework upon which social and political systems are built. Thus, the Indian tribal codes and legal systems, and Federal/State laws and policies for child protection constitute only the structural basis for addressing the problems of child maltreatment among Native Americans. Beyond these structures, appropriate services based on an accurate understanding of family life and culture must be provided to alleviate and ameliorate child maltreatment.

The publications reviewed in this chapter are those written to increase this understanding, both of the problems of minority families in America generally, and Indian families specifically. General references, prepared for all concerned with the problems of Indian child maltreatment, are reviewed to report the current state of knowledge in regard to incidence and prevalence, effects, and special issues of this problem. Reference for service providers, such as social workers, and mental health professionals, medical personnel, especially those service providers not familiar with the Native American cultures or family life, are reviewed together. References for Native American communities developing or operating social service systems, child welfare agencies, or child maltreatment prevention or treatment programs are reviewed to provide information to assist in these activities. For those seeking greater understanding of Indian family dysfunction and how to treat and prevent it, the references reviewed in this chapter are a starting point.

General References for Understanding Child Maltreatment Among Native Americans

The Virginia Child Protection Newsletter provides a detailed article outlining the issues of child abuse among minority populations, including information on incidence, stress factors, and social service/minority population clashes of values and lifestyles, for blacks, Hispanics, Asians, and Native American populations both nationwide and in Virginia alone. This overview raises many of the considerations addressed in research studies of child maltreatment among Native Americans specifically.

Incidence and Prevalence. White's study of the abuse and neglect of Navajo children examined the dynamics of maltreatment and socio-demographic characteristics of their families to obtain baseline estimates of incidence and prevalence of child maltreatment among the Navajo in the 1970s. A later journal article by White and Cornely reports further on this study, with results indicating that up to 8.6 percent of Navajo children under 9 years old and living on reservations had been abused or neglected. Abused or neglected children were found to be from larger and more socially incomplete families than those in the comparison group. Parents of abused or neglected children were also more frequently unemployed and supported by public funds than comparison group parents. Based on the information gained in their study, these authors urge the development of prevention programs to serve Navajo families.

Eppler and Brown focused on abuse and neglect as preventable causes of mental retardation in their retrospective case study analysis of the incidence of documented abuse or neglect among 436 cases of mental retardation seen between 1957 and 1973 in Anchorage, Alaska. Among their findings were a correlation between child maltreatment and mental retardation and higher incidence rates of abuse and neglect among Aleuts, Eskimos, and Indians than among Caucasians. An important ramification of these findings would be the need for Indian-oriented service providers to keep the possibility of mental retardation in mind when designing services and programs for the treatment of abuse and neglect.

Clarke and Menzell report their study of minority populations in a largely urban area of Tacoma-Pierce County, Washington, in which they surveyed these populations to determine their perception of child abuse and neglect in their communities. Questionnaires were administered, and interviews and discussions were conducted with individuals who were knowledgeable about child abuse. Respondents were asked to give their perception of the extent of the problem, their knowledge of actual cases, their attitudes toward child abuse and its reporting, their perception of the community's typical response to child abuse and neglect, their personal actions regarding the problem, and suggestions for necessary changes to upgrade services. The sample consisted of 161 subjects: 50 Hispanics, 54 Orientals, 39 Blacks, and 18 Native Americans. A majority of the respondents indicated a reluctance to involve the police, were aware of child abuse agencies, and were willing to help upgrade services in their communities. All groups reported higher levels of child neglect than child abuse. Twenty-five percent of the respondents did not believe that the community as a whole suffers when individual families engage in child abuse and neglect. These researchers conclude with the recommendations for the establishment of coordinated and cooperative efforts between child protection agencies and minority communities.

Special Issues

Urbanization. Much of the concern for the protection of Native American children from abuse and neglect centers on Indian children and families residing on tribal lands and in Indian communities. However, as the Institute for Scientific Analysis points out, in its study of the urbanization of the American Indian, more than half of all Native Americans live off their reservations. To determine the impact of moving to the city on Indian family life, 120 Indian families from the Oakland, California, Indian community were interviewed. One-third were matrilocal; 27 percent were receiving public welfare; and another 10 percent were receiving unemployment benefits. Each family was asked to select one of their children as the "focal child," and a series of questions was developed for these 120 children. Those children who attended school attended 69 different schools, resulting in a sense of isolation and powerlessness in these children. To assess the degree to which these families maintained their cultural connections, three measures of Indian integrity were developed: intergenerational use of the native language; the teaching of Indian ways in the home; and the mother's marriage preference (Indian or non-Indian) for her child. Although there were difficult adjustment problems for the children, family bonds remained strong despite the lack of family, social, and economic stability in many of the families. Three

types of families were identified on the basis of language retention: traditional families, where both mother and child spoke the native tongue; transitional families, where only the mother spoke the native tongue; and marginal families, where neither retained the native language. Families who were at home in both the Indian and white world had a greater ability to survive and adapt to the city than did those families who were at home in only the Indian world or who were not at home in either world.

This study also revealed parental efforts to maintain cultural contacts through social gatherings with other Indian families. However, parental attitudes toward the school system were ambivalent, especially among mothers who had attended boarding schools. This attitude raises another special child protection concern of Native Americans: institutional abuse, or the maltreatment of children in boarding schools or other residential facilities away from home.

Institutional Abuse. Two publications discuss the topic of institutional abuse from two Native American contexts of the term: that occurring in residential placements or foster homes and that occurring in Indian boarding schools.

The National Indian Child Abuse and Neglect Resource Center presents a paper discussing this issue in the first context. The Center noted the statistics behind its concern: 12 times as many Indian children as non-Indian children were institutionalized and 25 times as many Indian children were in foster care in 1977. The Center cites Federal laws, CAPTA, which mandated investigation and correction of child maltreatment in residential institutions, and the ICWA, which reinforced this mandate by explicitly addressing the needs of the vast number of institutionalized Indian children, in urging that persons, especially those who are mandated reporters for abuse and who come into contact with Indian children, be able to recognize the symptoms of physical abuse and neglect, sexual abuse, and emotional abuse and neglect. Further, the Center urges, to prevent abuse of children, Indian communities should seek every possible source of funding for developing programs and services for families, and for launching widescale recruitment and training programs for Indian foster and adoptive families. Tribal courts and children's codes should reflect the concern for and the ability of tribes to handle Indian child custody cases. Boarding schools and other residential institutions with Indian children should be closely monitored at all times by parents and other Indian leaders. Finally, adequate followup and evaluation efforts should be directed at foster and adoptive families to assure that continued services are provided for the child's welfare.

Indian boarding schools are the focus of Dlugokinski and Kramer's concern in their 1984 articles in which some of the frustrations and dilemmas that derive from maintaining separate boarding schools for American Indian children were examined. These authors suggested that boarding school experiences accentuate rather than resolve problems for Indian children, with part of the problem stemming from uncertainty over the school system's continued existence and the broad diversity of approaches, and of student body composition in these schools. Real student participation in boarding school affairs, the facilitation of intra- and interstaff communications, and innovative planning were discouraged or deterred by an emphasis on stability and status quo. Other problems cited in this article were poorer academic performance by

students in these schools, problems of acculturation as exacerbated by adolescence, and general lack of attention to the variety of over 30 Native American languages and cultures of students.

Institutional abuse is a long-standing problem in the Native American context, and the legislative and policy changes cited by the Center are relatively new. Further references to the adverse impact institutional maltreatment within those facilities had upon generations of Native American children are also contained in publications aimed exclusively at service providers as those best able to reconsider the policies resulting in removal of Indian children from their homes.

References for Service Providers

Practice in Minority Communities. The National Center on Child Abuse and Neglect, in its special report on child maltreatment within a cultural context, presents a collection of articles of interest to those serving minority populations. Of particular interest within this collection is a discussion of the development of parental self-help groups in minority communities, a report on a family service project for Native Alaskans, and a description from an urban Indian service project of the cultural importance of the extended family.

Social Work. Leigh, in his discussion of social work practice with minority clients, points to a need for culturally sensitive service providers:

> Since the Civil Rights movement of the 1960s, social work as a profession has strongly indicated that our education and practice must incorporate the concept of cultural pluralism as a viable area of practice knowledge and resulting practice skills. An analysis of the concept results in the need for a social worker who is service effective and also ethnically competent (Leigh, p. 43).

The need for social workers who can understand and work with minority culture is pressing, Leigh continues, as he describes those qualities that contribute to effective and ethnically competent social work practice. One of those qualities is the ability to squarely address issues of race and the impact of racial minority membership on the client's attitudes and outlook.

Native Americans are among the minority populations discussed in two articles primarily concerned with social service or health care delivery to adolescents. In Baker's discussion of social work with teenagers, minority adolescent issues, including problems of personality development and external social pressures experienced by these young people, are examined. Goodwin, Zouhar, and Bergman's medical case histories of hysterical seizures in adolescent incest victims included discussion of cultural beliefs concerning sexual abuse, such as the Navajo belief that epilepsy results from incest.

Working with Native Americans. Especially for the non-Indian social workers, questions of cultural differences must be addressed for effective service delivery. This is particularly important in child protective service delivery to Native American children and their families, for, as mentioned throughout this Report, cultural misunderstandings between Indian clients and non-Indian

social workers are seen as a central cause of unwarranted intervention and disruption of Indian families. Two studies cited in earlier chapters, the Office of Human Development's study of Indian child welfare practice, and the University of Denver's report on the delivery of social services to reservation residents, echo the view that failure to recognize the validity of Native American cultural practices in child rearing was a serious shortcoming and barrier to effective service delivery.

Green's literature review of the risks and attitudes associated with the placement of Indian children outside their cultural environment supports the view that the once common practice of placing Native American children in non-Indian adoptive and foster homes, thought to be in the best interests of the child, was not to the child's long-term benefit. Green points out that unique spiritual resources available in Indian communities were overlooked in the search for material resources and that social safeguards for continuity of care are provided by Indian extended family systems. Green concludes with the suggestion for current practice that a detailed family history be obtained, especially when serving Indian children in urban areas.

Swenson edited the proceedings of a conference of mental health professionals concerned with the problems of providing protective services for Native American children. Indian and non-Indian cultural differences were also a central topic of this 1977 conference, in which four factors important in effective service delivery were identified: variations in culture from area to area; rejection of the dominant culture; rebirth of Native American pride in their cultural inheritance; and a rapidly increasing Indian population. Recommendations from this conference included a call for reaffirmation of tribal heritages, service network development, active involvement in child protection matters of tribal councils, and mobilization of Indian community support.

Two papers from the National Indian Child Resource Center provide further insights into Native American culture in regard to child-rearing and working with dysfunctional Indian families. These papers also address the problems of attempted or forced assimilation, the legacy of unwarranted disruption of Indian homes, and the need for understanding the particular tribal culture among the 493 tribes listed by the BIA, each with distinct cultural and linguistic traits, kin systems, and social organizations. Sullivan discusses similar issues in regard to Indian children in Canada, whose child welfare system shared many of the same problems and shortcomings as that of its southern neighbor.

Training Materials for Service Providers. To meet the need for culturally sensitive service providers, a number of training materials oriented toward understanding the special concerns of Indian children and family have been developed.

Urban and Rural Systems Associates produced a report in which the background, methodology, and recommendations resulting from a study intended to provide training to selected personnel from organizations and agencies having child abuse and neglect programs in Federal regions and among Native Americans are summarized. The study involved the development of a training curriculum and conducting of training sessions in the diagnosis and treatment of child abuse and neglect. In the first phase of the training conferences, non-Native

American training for supervisors and nonsupervisors in the target regions was developed. The second series concentrated on professionals and nonprofessionals working in the field of child abuse and neglect with Native Americans. The goals of the project consisted of: (1) developing more specialized and informed skills in diagnosing and treating child abuse and neglect for personnel from hospitals, mental health programs, public health agencies, child protective services, or programs relating to the needs and welfare of children, law enforcement, schools, and courts; (2) developing multidisciplinary teamwork and coordinative skills among various agencies or programs involved with child abuse and neglect; and (3) augmenting specific supervisory skills in and tools for staff development in order to enable the participants in the training program to pass on what they have learned to their various staffs.

Butler uses a sample case of marital discord resulting in child neglect on an Indian reservation to illustrate a brief discussion of family unit casework with neglectful parents. Suggestions for proper interaction by the caseworker stress listening and passive action rather than overt control of the situation; home visits made quickly after initial contact with the child to prevent development of hostilities; and the use of separate interviews to understand each client's feelings until they initiate joint interviews on their own. The author strongly recommended that caseworkers be aware of individual feelings as they are expressed in family interaction and the social value system operating within the family unit to avoid misinterpretation of a family's needs.

In a handbook for social workers, Horejsi offers these service providers information and guidelines that may aid in the formation of sound judgements and decisions related to the use of foster family care. An overview of foster care is provided, and more than 150 questions are discussed concerning the placement decision, the natural parents, permanence planning, the child in foster care, recruitment of foster families, selection of foster families, the matching decision, the foster parents, legal concepts in foster care, issues in foster care for Native American children, and the role of the social workers.

More detailed information on foster and adoptive placement of Native American children is provided by the Native American Coalition of Tulsa, whose National Indian Child Abuse and Neglect Resource Center manual provides information on the recruitment, training, licensing, and evaluation of Indian foster homes and adoptive homes to assist welfare and social service agencies in dealing with the abused Native American child. The inherent rights of foster children are presented and the foster care process is described. Both generic and child-specific recruitment of the Indian foster family are discussed, and guidelines for planning a recruitment campaign, the recruitment process, and recruitment strategies through various medias are described. Through careful planning between the placement agency and the foster family, focusing on the child as an individual, and proper training of the Indian foster family in parenting skills and child development, specific needs of the child can be determined and effectively dealt with. General procedures for licensing the Indian foster home include the foster parents' formal application completed as required by the child-placing agency, and a home study to inform, evaluate, and determine the prospective foster family's acceptability. The need for Native American foster homes is understood, for Indian foster parents are sensitive to the unique cultural needs of the Indian child and can

provide temporary care through which the gap between the child's past problems and future solutions can be bridged in an orderly, progressive, and effective manner.

Materials that can be used in training social service providers to meet the needs of minority clients are catalogued in View's 1982 manual published through Creative Associates for the Children's Bureau. This resource guide lists materials that should be used by trainers in a child welfare training curriculum whenever members of Black, Hispanic, and Native American populations are part of the population served by the participant's agency. The guide focuses attention on identifying attitudes and practices that work against strengthening minority families and helps to develop skills for structuring or providing services sensitive to the cultural values of the agency's clients. The guide contains cross-cultural resources as well as resources related specifically to Black, Hispanic, and Native American cultures. Each section contains four categories of resources: a list of reference materials; training materials, including complete training packages and supplemental materials; regional child welfare training center project addresses and descriptions; and addresses and telephone numbers of relevant organizations.

References for Native American Communities' Child Welfare and Protection Programs

With the increasing trend toward provision of family and child welfare services to Native Americans through their own tribal and community organizations, the experiences of such programs and service agencies are important for developing effective strategies to meet the needs of Native American families and children in the future. Laquer provides a compilation of transcripts representing the "state-of-the-art" in Indian child protection: the proceedings of the 1984 Second National American Indian Conference on Child Abuse and Neglect. These papers address the multitude of issues surrounding the identification of Indian child abuse and neglect, with a focus on tribally supported and Indian-oriented strategies.

Reports on the progress, problems, and results of tribally sponsored or operated child welfare programs are also valuable not only for their descriptions of present programs, but in addition, for their implications for further program development.

Many of these programs are funded under Federal grants, and therefore evaluation reports as required under these grants are sources of information concerning the program's operation. In one such 1976 evaluation, CPI Associates submitted to the Office of Child Development of the then-Department of Health, Education, and Welfare the results of interviews and observations concerning the trends, changes, and progress of the Innovative Demonstration Projects in Child Abuse and Neglect. Individual sites which were evaluated and compared include the Mississippi Band of Choctaw Indians Child Advocacy Programs in Philadelphia, Mississippi; Cook Inlet Native Association Child Abuse and Neglect Program in Anchorage, Alaska; Ah-Be-No-Gree Program at the University of Minnesota in Minneapolis; and the Ku-Nak-We-Sha Program of the Yakima Indian Nation in Toppenish, Washington.

A more recent evaluation report of grants under the ICWA was submitted in 1981 to the BIA, Division of Social Services by the Clary Institute (since renamed TCI, Incorporated, this Indian-owned small business now also publishes Linkages). While the focus of this report is the development of a grants monitoring process or quality control system, it does review the operation of ICWA grantees, including juvenile shelter home for the San Idlefonso Pueblo; a parent advocate program for the Salt River Pima-Maricopa Indian Community; a family counseling program for a consortium of 12 Indian organizations in California; and child welfare code drafting and program education/training for the Siletz tribe of Oregon; an Indian foster home program for urban Indians in Portland, Oregon; and a child and family services implementation project for the Tlinglet and Haida Native Alaskans. Additional programs described in this report include the Navajo center for processing their child welfare cases; the Absentee Shwanee, Soe, and Fox community's family and individual counseling program; the Sisseton-Wahpeton group therapy and shelter project; the Fort Belknap referral and counseling project; and the urban St. Paul Indian Center providing a wide array of social, educational, and cultural services to that community.

Specific Native American child welfare or protection projects, in addition to being evaluated as part of their funding requirements, are also the subjects of articles describing their operation. These projects and reports on their operation include:

- The Arizona Community Development for Abuse and Neglect (ACDAN):
  - In addition to a report by ACDAN on its activities from January 1975 through June 1978, Palmer and Pablo submitted a report on ACDAN at the Second Annual National Conference on Child Abuse and Neglect in April 1977. They write that ACDAN has worked with 17 of the 20 reservations in the State and more than 1,200 reservation residents. This outreach stresses on-site training sessions with parents, social service staff, health and education officials, and tribal representatives. Community development stresses cooperation in participation as opposed to competition between people. It also stresses maximum utilization of local resources, which strengthens the extended family system as well as tribal culture and life style. A nondirective approach to decisionmaking is used, thus eliminating program imposition and promoting self-determination of tribes. Citizen participation for decisionmaking reinforces the old tradition of community collaboration for community problem solving. Community development also promotes respect for all, which reinforces the values of human quality and individual capabilities. Palmer and Pablo further suggest that the approaches used by the ACDAN project might be used by State agencies considering similar outreach efforts to Indian reservation communities.

- The Makoh Child Development Center:
  - Butterfield presented a progress report from this Center in 1975 in which the efforts of this Center, operated by the Makah Indian Tribe in Washington and supported with Federal funds, were outlined. The most active part of this project was those social service agencies and service units involved with families where child abuse and neglect has occurred. Agencies involved in this effort include

Head Start, day care, the Indian Health Unit, law enforcement, the local school, Washington State Department of Social and Health Services, the Makah Tribal Council, and the Bureau of Indian Affairs. Progress in effective treatment, early warning, rapid detection, and prevention programs is discussed. A treatment methodology had been developed to include initial contact, meeting with parents, and referral to appropriate agencies. Although there was no group mandated to monitor interagency communication, regular meetings of all agencies involved in a case were held and services in the areas of emergency food, clothing, and employment had been developed. To promote rapid detection, parent education classes were developed and sessions of a parent discussion group were held. This project also included the development of a reporting system, including law enforcement capability to implement this system.

- The Mississippi Choctaw Parent Child Development Center:
  - In 1980, Crawford reported that as a direct result of the Mississippi Choctaw Parent Child Development Program (PCDP) referrals, at least 31 families per year received general assistance and child welfare assistance payments and 300 parents received some type of training. Development of parenting skills through program activities, the availability of free quality care for preschool children, and increased family earning power have contributed to a decline in child abuse and neglect. The PCDP, initially funded by the Bureau of Indian Affairs in 1973 as a pilot project, has had a reservation-wide impact in each of its four main areas of focus, namely: health and nutrition, education, social services, and staff and parent development. The PCDP staff performed a needs assessment that indicated that most of the programs for children on the reservation were mandated to provide services based on similar principles. As a result, an effort was made to coordinate programming and implement programs in areas where services were not being provided. Operation and design of the program have also involved a number of local parent committees. The program operates in close cooperation with Headstart under the aegis of the Choctaw Early Education Program.

- The Sioux Youth Development Association, Incorporated:
  - The Sioux Youth Development Association, Inc. (SYDA), is a private nonprofit organization which serves as the child welfare agency for the Cheyenne River Sioux Reservation. In 1976 Lane and Williams for the SYDA reported that cooperation with the Public Health Service has resulted in the creation of a multidisciplinary child protection team, one of the few that are easily accessible to Native Americans. The SYDA staff are cross-trained with local fire, police, and ambulance crews and also function as social service workers. One of the major efforts of the SYDA is the operation of Tipila, a residential care center for young people in need of emergency services. In the course of its operation, the function of SYDA has concentrated on diffusing as many family problems as possible before police intervention or separation is necessary.

In a journal article 2 years later, Wichlacz, Lane, and Kempe further discuss characteristics and management of child abuse and neglect on the Cheyenne River Sioux Indian Reservation.

- Yakima Indian Nation, Project Ku-Nak-We-Sha:
  - The Yakima Indian Nation, in a 1978 paper, reports on the issues and services associated with Project Ku-Nak-We-Sha, undertaken to develop effective child abuse and neglect services for reservation residents in Washington. The objectives of the project are to end the removal of abused or neglected children from the nurturing milieu of their kinship system; to enhance ability of their families to function more effectively and thereby prevent child abuse and neglect; to provide temporary shelter and protective care to children when separation from parents is necessary; to provide coordinated services to families in need of multiple services; to increase community awareness of child abuse and neglect and facilitate a willingness to report the occurrence; and to provide educational services to the community aimed at developing positive alternatives to neglectful and assaultive behavior toward children. The service delivery system of the project is described and the project design is outlined. Other sections of the report deal with project development, tasks and accomplishments, and program recommendations.

- The Urban Indian Child Resource Center (CRC) of Oakland, California:
  - As the first NCCAN funded urban Indian demonstration project, founded in 1974, the operation and activities of the CRC are described in four reports, beginning with White and Company's evaluation report in 1976, which concluded that the CRC works well with the San Francisco-Oakland metropolitan child protection system and provides much-needed services for Indian residents of that area. In Metcalf's 1978 report the structure of the Center is described, and an overview of the families who come to the Center for help is presented. Intervention and prevention activities of the Center are discussed and illustrated with brief case descriptions. In another article published in 1979, Metcalf provides a description of the Center's treatment model and an analysis of its innovative approach. The Center views child abuse and neglect as the result of social processes originating outside the individual and occurring because of institutional pressures exerted by "Anglo" society on Native American cultural systems. The goal of treatment at CRC is interdependence--to gather people into a mutually reinforcing social network. Treatment is not provided solely by professionals, but by many persons in the network. An analysis of case histories reveals two basic types of client families at CRC: parents who are at risk of losing their children because they cannot meet their basic physical needs, referred to as New Migrants; and parents, usually single mothers, who moved from the reservation when they were children in one of the first relocation families, referred to as Second-Generation Migrants. Central to the CRC's activities is the Family Support Network, whose members provide foster homes as well as support, advice, and mutual caring to new arrivals in the city. For client families, the Network forms the basis for the reconstitution of the traditional extended kin group. Fields

further describes the growth of the CRC as of 1979. Its original goal was to help Indian children who were victims of child abuse and neglect; it has since expanded its services to include work with emotionally troubled children, delinquent adolescents, and their families. Referrals to the Center come from schools, hospitals, community agencies, and courts. Children and families with severe mental disorders and alcohol problems are referred to other agencies. CRC staff give workshops for non-Indian agency personnel in social service and juvenile justice work. A mental health team of CRC staff provides individual and family counseling at the Center and in the homes of Indian families. The major aims of counseling are to strengthen the pride of children in their cultural heritage; help families become bi-cultural as they adjust to urban life; and enhance self-image while strengthening the family. The Center has provided services to over 1,500 clients from more than 50 different tribes. The mental health team is supervised by a non-Indian psychologist; paraprofessional counselors are Indian. Additional members of the mental health team include a family representative (whose responsibility is to coordinate outside services for families and inform them of appropriate public assistance agencies, employment possibilities, child care resources, and foster care) and a homemaker. The CRC also offers child development and parent skill classes. The CRC has succeeded in getting 11 Indian homes licensed as foster homes and 28 homes to join the Indian Family Support Network, which offers baby-sitting services, food, and emergency supplies.

One final report of child welfare services developed with and supported by Indian communities is Shore and Nicholls' article describing group homes operated by Plateau culture tribes in central Washington and Oregon which incorporate traditional disciplinary traditions within a system for providing care to abused and neglected Indian children.

Chapter V: Bibliography

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CHAPTER VI

PROGRAMS FOR NATIVE AMERICAN FAMILIES AND CHILDREN

Much of the preceding discussion focuses on past issues in addressing the problem of Native American child maltreatment. But in light of the revitalized efforts of Indian organizations, Native American tribes, child protection service providers, and others concerned with the future of Indian children and families, much more is being done now to strengthen Native American families and combat Indian family dysfunction.

Listed below are programs and projects currently in operation, selected from the Clearinghouse database program file as representative of the projects designed to meet the problems and issues in Native American child protection sketched in this report. These programs are listed under headings describing their central focus: tribal/Indian community social or child protective services, residential/foster care, child protection teams, legal services, and family support activities. Each listing provides the database reference number; the project title; director's name; group affiliation and address; date project began; and program description, including services, clientele, organization, and funding.

Tribal/Indian Community Social or Child Protective Services

Although a few of the programs listed below, such as the Urban Indian Child Resource Center of Oakland, California, have been in operation for a number of years, most of these projects are relatively new. They all reflect the emphasis on service provision by Native Americans for Native Americans.

CP-01216
CHEROKEE CHILD AND FAMILY SERVICES
Jackson, G.
Cherokee Boys Club, Cherokee, NC
P.O. Box 507; Cherokee, NC 28719
June 1982.

SERVICES: The purpose of the program is to prevent child abuse and neglect by Cherokee Indian families who have been identified as at risk. Direct services to families include couples and family counseling, social work counseling, group and individual therapy, employment, financial, and housing assistance, and child management classes. Direct services to children include play therapy and a "Special Friend" program. Indirect services include referral, advocacy, public awareness, and services coordination.

CLIENTELE: Cherokee Indians from a multi-county catchment area.

STAFFING: The program is staffed by child development specialists, caseworkers, family counselors, and a program director and planner. Volunteers serve as recreational aides and study interns. The program uses a four-member multidisciplinary team for case management, training, family counseling, and child development; team members include social workers, family counselors, and child development specialists.

ORGANIZATION: The program is administered by a private, nonprofit child care and residential care organization, and supervised by the Cherokee Children's Home Board of Directors.

COORDINATION: Agreements with other service providers are being developed. Cases are referred to the program by public hospitals, public social service agencies, public schools, law enforcement agencies, courts, family members, self-referrals, and sources from within the agency. Cases are referred to county agencies.

FUNDING: The program is financed by direct Federal funds and State-administered Federal funds.

CP-01208
CHEROKEE SOCIAL SERVICES
Sanders, J.E.
Bureau of Indian Affairs, Cherokee, NC
Cherokee, NC 28719
February 1979.

SERVICES: The program provides protective services for American Indian children and the elderly, and provides foster care in Indian homes. Direct services to parents include alcohol and drug counseling, couples and family counseling, social work counseling, group therapy, individual therapy, and financial assistance. Available through referrals are legal assistance, housing assistance, medical care, residential care, employment assistance, family planning assistance, and transportation. Direct services for children include individual therapy, emergency foster care, a big brother-sister program, family and residential foster care, crisis nursery, diagnostic services, and emergency services. Available through referrals for children are day care, speech therapy, education, and medical services. Indirect services include referral, advocacy, program planning, public awareness, services coordination, and technical assistance.

CLIENTELE: Federally recognized American Indians from a multi-county area are served. Indirect services are provided to lay audiences and professional groups.

STAFFING: The program is staffed by social workers, consultant psychologists, eligibility determination specialists, and clerical support. The program uses a multidisciplinary team composed of lawyers, psychologists, physicians, social workers, and teachers. Volunteers serve as big brothers and sisters and chief advocates.

ORGANIZATION: The program is administered by a public, Federal and a public, county agency.

COORDINATION: The program coordinates its activities with the Cherokee Children's Home Board, and the Tribal Child Welfare Review Committee. Major referral sources include public hospitals, public schools, law enforcement agencies, family members, neighbors, and self-referrals.

FUNDING: Most of the program's support comes from direct Federal funds and State-administered Federal funds, with the remainder from State funds, personal donations, and funds from private, nonprivate, and for-profit organizations.

CP-01799
CHIPPEWA TRIBE HUMAN SERVICES
Aitken, R.
Minnesota Chippewa Tribe Human Services, Cass Lake
Box 217; Cass Lake, MN 56633
October 1978.

SERVICES: The purpose of the program is to eliminate child abuse and neglect. Direct services provided to parents include alcohol counseling; social work counseling; lay therapy; legal assistance; employment, financial, and housing assistance; and family planning assistance. Direct services to children include day care, emergency foster care, and residential foster care. Indirect services include referral, advocacy, child abuse and neglect reporting, information and library services, legal services, professional and public awareness, and services coordination.

CLIENTELE: Groups receiving indirect services include lay audiences, professional groups, papaprofessional groups, and professional and paraprofessional participants in Indian programs. Persons throughout the State are served.

STAFFING: The program uses a multidisciplinary team for case consultation and training; team members include clergy, lawyers, nurses, social workers, mental health workers, and school principals.

ORGANIZATION: The program is administered by a federally recognized tribal child welfare agency.

COORDINATION: Major referral sources are public hospitals, public social service agencies, public schools, law enforcement agencies, courts, family members, neighbors, and self-referrals. Cases are referred to public, county agencies.

FUNDING: The program is supported by direct Federal funds.

CP-03127
CHILD ABUSE AND NEGLECT PROJECT
Pighin, B.
Cook Inlet Native Association, Anchorage, Alaska
670 W. Fireweed Lane; Anchorage, AK 99503
July 1975.

SERVICES: The program purpose is to work with Alaskan Native families involved in child abuse or neglect. The program attempts to replicate the village extended family within an urban setting. Social work counseling, parent aide, individual therapy, family counseling, and health counseling services are offered directly to parents, with Parents Anonymous, homemaking services, child management classes, medical care, health

counseling, and welfare services purchased from other programs or obtainable through referrals. Children receive play therapy and emergency foster care services directly, with day care, individual therapy, specialized therapy, and foster care services purchased from other programs or furnished through referrals. The program utilizes luncheons, potlatches, and seasonal activities to create supportive networks.

CLIENTELE: Services to Native Alaskan families are emphasized. Clients are drawn from mixed-income, rural, suburban, and urban areas. About 40 families are served.

STAFFING: The program staff consists of lay therapists and social workers. An outreach worker has recently been added.

ORGANIZATION: The program is conducted by a private, nonprofit community service organization governed by a Board of Directors. Program evaluations will be conducted by CPI Associates of Dallas, Texas.

COORDINATION: Hospitals, social service agencies, schools, and concerned individuals are the major referral sources. Cases are reported by name to the social services. Abuse reports are submitted to the Alaska Division of Health and Social Services and CRS evaluations are shared with the Anchorage Child Abuse Board. The program utilizes a seven-member multidisciplinary team. Part-time staff are also shared with the Child Abuse Board.

FUNDING: The program is Federally funded.

CP-02852
NAVAJO AREA SOCIAL SERVICES
Evans, N.R.
Bureau of Indian Affairs (Dept. of Interior), Window Rock, Arizona
Branch of Social Services
P.O. Box M; Window Rock, AZ 86515

SERVICES: The program monitors the delivery of social services for the Navajo nation through a contract with the Navajo Tribal Division of Social Welfare. The social services involved are general financial assistance, child welfare assistance, miscellaneous assistance, and family and children's services, including child abuse and neglect and community services.

STAFFING: Child welfare personnel and social workers staff the program. A Navajo-speaking child welfare staff has been developed, and professional social work training has been provided for the Indian staff.

ORGANIZATION: The program is conducted by a public, Federal organization under the Department of the Interior, Bureau of Indian Affairs. Case conferences, supervisory conferences, training workshops, and case record reviews are used to evaluate the program.

COORDINATION: Contact is maintained with the Bureau of Indian Affairs Contracting Office, other Federal agencies, and tribal offices and agencies.

FUNDING: The program is supported by direct Federal funds.

...The next abstract describes the Navajo Nation's child protective service unit...

CP-02861
SPECIAL SERVICES UNIT
Sombrero, L.
Navajo Tribe, Window Rock, Arizona,
Division of Social Welfare
P.O. Drawer Q; Fort Defiance, AZ 86504
October 1981.

SERVICES: The purpose of the program is to prevent and treat child abuse and neglect. Direct services to parents include couples and family counseling, 24-hour counseling, group and individual therapy, lay therapy, and residential care. Direct services to children include therapeutic day care, emergency foster care, and family and residential foster care. Indirect services include referral, training, services coordination, technical assistance, advocacy, child abuse-neglect reporting, professional awareness, program planning, and community education. A hot line will be available in fiscal year 1983 for child abuse and neglect reporting, information dissemination, crisis intervention, and referral.

CLIENTELE: Neighborhood residents are served.

STAFFING: The full-time staff consists of two social workers and a child protective service worker. The program uses a multidisciplinary team for case consultation, case management, diagnosis, and treatment; team members include clergy, psychiatrists, psychologists, physicians, social workers, teachers, and alcohol counselors.

ORGANIZATION: The program is administered by a Federal agency that deals in child advocacy, child care, child protection, child welfare, community service, legal services, residential care, and social services. The Division of Social Welfare of the Navajo Nation supervises the program. The program is monitored under contract by the Social Services Division of the Bureau of Indian Affairs.

COORDINATION: Cases are referred to the program by medical personnel, private and public hospitals, private and public social service agencies, courts, family members, neighbors, and churches. Cases are referred by the program to State agencies.

FUNDING: All program income comes from direct Federal funds.

CP-03239
QUINAULT TRIBAL SOCIAL SERVICES
Todd, G.M.
Quinault Indian Nation, Taholah, Washington
P.O. Box 1118; Taholah, WA 98587
October 1974.

SERVICES: Part of the program scope encompasses child abuse and neglect. Services are available on a 24-hour basis. The program is a licensed child placement agency and provides adoption and foster care services. Social work counseling, group therapy, couples counseling, family counseling, individual therapy, health counseling, child management classes, family planning assistance, and welfare services are direct services to parents, with parent aide, homemaking services, and residential care obtainable through referrals, in addition to some duplications of direct services. Direct services to children include individual therapy and foster care services, with day care, therapeutic day care, medical services, specialized therapy, and residential care services furnished through referrals. The foster care program has recently been changed to increase the natural parents' involvement in decisionmaking and to increase contacts between the child and his parents.

CLIENTELE: Individual children and families are served. The program serves about 48 families and 163 individuals (children and family members). Clients are drawn from low-income, rural areas on or near the Quinault Reservation.

STAFFING: The program staff consists of four child welfare personnel, three contracted, mental health professionals, and medical and mental health referral resources (IHS). All staff members are Indians.

ORGANIZATION: The administering organization is governed by the Quinault Tribal Business Committee. Program evaluation is maintained by the Tribal Human Resources Department and Tribal Business Council.

COORDINATION: Private physicians, social service agencies, schools, legal authorities, relatives outside the immediate family, neighbors, the public health service, and victims are the major referral sources. Cases are reported by name to the legal authorities and to a State central registry maintained by the Department of Social and Health Services. Pertinent case information is shared with the Department of Social and Health Services and with the Quinault Tribal Court.

FUNDING: Funding is from 95-638 Bureau of Indian Affairs Social Service Contract, 1984 Indian Child Welfare Act Grant, and the Child Placing Contract with the State of Washington.

CP-02959
URBAN INDIAN CHILD RESOURCE CENTER
Muneta, A.; Patrick, C.
Indian Nurses of California, Inc., Oakland
390 Euclid Avenue; Oakland, CA 94610
July 1974.

SERVICES: The purpose of the program is to provide services to Indian children and their families who are experiencing child abuse and neglect. Direct services to parents are social work counseling; family counseling; alcohol and drug counseling; group, individual, and lay therapy; medical care; financial and housing assistance; babysitting; homemaker services; and transportation. Direct services to children include individual therapy, day care, emergency foster care, family foster care, play

therapy, and emergency services. Indirect services include referral, training, advocacy, child abuse and neglect reporting, information and library services, program planning, public awareness, and services coordination.

CLIENTELE: Individual children, parents, and families from a mult-county area are served.

STAFFING: An executive director, family representatives, counselors, foster home recruiters, and a psychologist staff the program. Volunteers are used as clerical aides. The program uses a multidisciplinary team for case consultation, diagnosis, training, and treatment. Team members include lawyers, nurses, psychiatrists, psychologists, physicians, social workers, and teachers.

ORGANIZATION: The program is administered by a private, nonprofit organization, and evaluated through a quarterly reporting system.

COORDINATION: Medical personnel, private and public hospitals, private and public social service agencies, private and public schools, law enforcement agencies, courts, family members, neighbors, self-referrals, churches, and sources from within the agency all provide referrals to the program.

FUNDING: Half of the program's income is from direct Federal funds and State funds. The remainder is from county funds, city funds, funds from private nonprofit organizations, funds from private for-profit organizations, and personal donations.

CP-02655
UTE MOUNTAIN-UTE TRIBAL SOCIAL SERVICES
Mountjoy, D.; Bronson, M.
Bureau of Indian Affairs, Towaoc, Colorado
Ute Mountain Tribe Social Services
Towaoc, CO 81334
February 1979.

SERVICES: The purpose of the program is to provide a full range of child protective services to Indian children, including initial investigation, filing of petitions in tribal courts, foster home licensing, placement, and supervision. Direct services to parents include couples and family counseling, alcohol and drug counseling, social work counseling, individual therapy, and financial assistance. Direct services to children include individual therapy, emergency foster care, and family and residential foster care as well as RCCF and State hospital placements. Indirect services include referral, training, child abuse-neglect reporting, service coordination, technical assistance, advocacy, program planning, and public and professional awareness.

CLIENTELE: The program provided direct services to 160 Ute Mountain Tribe children, 82 parents, and 41 families during the past year. Indirect services were provided for professional and paraprofessional groups.

STAFFING: Six full-time social workers staff the program.

ORGANIZATION: The program is funded by a Federal public welfare organization (Bureau of Indian Affairs) and is under the supervision and administration of the Ute Mountain-Ute Tribal Council. Evaluation is by the Bureau of Indian Affairs.

COORDINATION: Program activities are coordinated with the tribal council, tribal court, law enforcement, and public health services, public schools, multidisciplinary teams that include lawyers, nurses, psychologists, social workers, and teachers. Clients are referred by health care professionals, public social service agencies, public schools, law enforcement agencies, courts, family members, neighbors, self-referrals, and sources within the agency.

FUNDING: Direct Federal funds support the program.

Residential/Foster Care

As noted throughout this Report, the practice of placing Native American children in non-Indian foster homes and residential facilities off their reservations and far from their extended families was seen as a serious concern. The ICWA and other legislative policies are aimed at correcting the damage done to Indian family unity by this practice. The programs listed below are examples of tribal initiatives in addressing the problem of out-of-home, long-term care, for again, these are programs operated by Indian organizations for Indian children.

CP-01209
CHEROKEE ACTION FOR FOSTER CHILDREN COMMITTEE
Crowe, L.; Thomasson, E.
Bureau of Indian Affairs, Cherokee, North Carolina, Cherokee Indian Agency
Cherokee, NC 28719
May 1973.

SERVICES: Part of the program deals with child abuse and neglect. Educational services are provided for families. Day care, medical care, individual therapy, and foster care services are offered to children through referrals. Caseworkers contact clients on a monthly basis to maintain followup. The Cherokee Indian Agency provides transportation, stenographic work, and an NASW social work consultant for the program. In addition, the program develops and produces educational films for loan distribution or sale to groups interested in protective services or Native American culture.

CLIENTELE: Program services focus on families. Clients are drawn from mixed-income, rural areas. The program also serves other public agencies and other communities.

STAFFING: Community volunteers are utilized.

ORGANIZATION: The program is evaluated by reports submitted to and conferences with the Bureau of Indian Affairs and with the Swain and Jackson County Department of Social Services.

COORDINATION: The program is affiliated with the National Action for Foster Children Organization. Neighbors are the major referral source. Cases are reported by name to the legal authorities and the health department. Statistical information is shared with the community.

FUNDING: The program's income is derived primarily from volunteer fund-raising efforts.

CP-03228
MUCKLESHOOT YOUTH HOME
Starr, M.; Calabrese, B.
Muckleshoot Indian Tribal Council, Auburn, Washington
39015 172nd Avenue, SE.; Auburn, WA 98002
March 1979.

SERVICES: The program's purposes are to gather information about the nature, causes, and effects of child neglect on families and the community; to develop a tribal social service and juvenile court which will provide prevention, identification, investigation, Indian foster home licensing, and child placement services; and to establish and implement a comprehensive treatment program geared to tribal cultural values and childrearing practices. Direct services to families include social work counseling, 24-hour counseling, group and individual therapy, residential care, babysitting, child management classes, homemaker services, and transportation. Direct services to children include day care, emergency foster care, family and residential foster care, play therapy, services coordination, technical assistance, advocacy, child abuse and neglect reporting, legal services, needs assessment, professional and public awareness, and program planning. The program operates a reporting hotline (206/833-8782).

CLIENTELE: State residents are served by the program.

STAFFING: A social worker, a psychologist, homemakers, and a lawyer staff the program. The staff functions as a multidisciplinary team for treatment.

ORGANIZATION: The program is administered by the Muckleshoot Tribal Council.

COORDINATION: Staff members participate on the Indian Child Welfare Committee, the Indian Child Welfare Coalition, and the Most-in-Need Network for Agency Networking and Regional Planning. Major referral sources include medical personnel, private and public social service agencies, public schools, courts, family members, neighbors, sources within the program, and the Muckleshoot Clinic.

FUNDING: The program is supported by direct Federal funds and State funds.

CP-02788
TIPLER
Lane, J. M.
Sioux Youth Development Association, Inc., Eagle Butte, South Dakota
P.O. Box 124; Eagle Butte, SD 57625
September 1972.

SERVICES: The purpose of the program is to provide emergency shelter for children living on the reservation. Social work counseling, family counseling, and individual therapy are offered directly by the program; parent aide, group therapy, homemaking services, health counseling, welfare services, family planning assistance, medical care, and residential care are available by referral to other programs. Play therapy, individual therapy, foster care, residential care, and legal counsel for children are offered directly to children by the program. Legal counsel for children, speech or specialized therapy, and medical care are available by referral. Followup is provided by daily to bi-monthly direct contact, weekly to bi-monthly collateral contacts, and daily to bi-monthly telephone calls. A reporting hotline is in operation especially on weekends and evenings when the State line is closed.

CLIENTELE: Children to age 18, parents, and families from the Sioux Reservation are served. Indirect services are offered to lay therapists, emergency homemakers, and drug and alcohol abuse programs.

STAFFING: Social workers and houseparents are on the program staff. Nurses, child welfare personnel, and psychiatric social workers are shared with other services. Volunteers are used as lay therapists and emergency homemakers.

ORGANIZATION: The program is conducted by a private nonprofit organization under supervision of the Sioux Youth Development Association; primary organization focus is on child welfare. Annual fiscal evaluation on site is handled by an outside evaluator and on-site program evaluation are performed by the agency social workers.

COORDINATION: The Child Protection Team is composed of six members, including a doctor, social workers, a court service worker, and a Sioux Youth Development Association representative. Hospitals, government social service agencies, schools, law enforcement agencies, courts, concerned individuals, and abuse victims refer cases to the program. Case reports are sent to the police or court officials, social services, health departments, the State Central Registry, Cheyenne River SCAN Register, the Community Legal Service of South Dakota, the Bureau of Indian Affairs, and the State Department of Social Services.

FUNDING: The program income consists of about 50 percent direct Federal funds, 10 percent State funds, and 40 percent private funds from voluntary agencies and personal donations.

Child Protection Teams

The effective treatment of child abuse and neglect requires the cooperative efforts of various professionals and concerned members of the community. Multidisciplinary child protection teams are viewed as an effective way of coordinating services to maltreated children and their families. Two such programs in Native American communities are listed below:

CP-02785
CHEYENNE RIVER CHILD PROTECTION TEAM
Johnson, J.; Koehler, V.
Cheyenne River Child Protection Team, Eagle Butte, South Dakota
Eagle Butte, SD 57625
1974.

SERVICES: The committee was organized voluntarily to coordinate services to families and children. Each member represents an agency, and actual casework is done through these agencies. The entire program is oriented toward coordinating agency services so that the clients' needs are met.

CLIENTELE: The primary service catchment area is the Cheyenne River Indian Reservation. Children, parents, and families receive services through the cooperating agencies.

STAFFING: The program is staffed by a voluntary multidisciplinary team composed of a physician; a public health nurse; a private agency director; and three social workers representing the Bureau of Indian Affairs, the Public Health Service, and the South Dakota Department of Social Services.

ORGANIZATION: The Bureau of Indian Affairs, Social Services chairs the committee.

CP-02725
CROW RESERVATION CHILD PROTECTIVE TEAM
Weasel, A.P.; Anker, L.
Indian Health Service, Crow Agency, Montana Crow Service Unit
Crow Agency, MT 59022
April 1978.

SERVICES: The program is devoted exclusively to the prevention and treatment of child abuse and neglect. The principal direct services for parents are alcohol counseling, family counseling, social work counseling, 24-hour counseling, group and individual therapy, parent aide, legal services, medical care, employment assistance, family planning assistance, and financial assistance. Children's services include individual therapy, emergency foster care, family foster care, and emergency services.

CLIENTELE: American Indian children to age 18 years and their families residing in the county are served.

STAFFING: Four full-time community health nurses, five social workers, and a tribal court juvenile officer staff the program. Volunteers serve as lay therapists.

ORGANIZATION: This Federal medical program is under the governance of the Billings Area Office of the Indian Health Service. Activities are carried out under the tribal law and order code in most cases. Evaluation is carried out by the Indian Health Service Family Services.

COORDINATION: Federal, county, and tribal agencies have representatives on the team. Principal sources of referrals to the program include private health care personnel, the courts, government social service agencies, law enforcement agencies, and sources within the agency itself.

Legal Services/Guardians Ad Litem

Legal representation for the victim of abuse and neglect is important in assuring that the child's best interests are truly served by the judicial process. Such representation in tribal courts is provided by projects such as the two listed below:

CP-02862
NAVAJO CHILDREN'S LEGAL SERVICES
Claw, S.T.; Gladner, M.S.
Office of Navajo Economic Opportunity, Ft. Defiance, Arizona
Box 589; Ft. Defiance, AZ 86504
October 1978.

SERVICES: The purpose of the program is to develop methodologies for the provision of legal services to abused and neglected children and for the improvement of the juvenile justice system. Parents receive legal services directly and other services through the courts. Children's services include legal services and guardian ad litem; other services to children are provided through the court. Emergency legal assistance is available 24 hours a day by telephone.

CLIENTELE: About 500 children to age 18 years in two Navajo reservation court districts are served. Nontreatment services are provided for lay audiences, professional groups, and paraprofessional groups.

STAFFING: The full-time staff consists of a director, two community legal representatives, and two clerks. Serving the program part-time are 211 guardians ad litem and 54 legal counsels. Volunteers are utilized as guardians ad litem and legal counsels.

ORGANIZATION: The program is administered by a private, nonprofit organization. Evaluation will be conducted both internally and externally.

COORDINATION: Program activities are coordinated with the Chinle and Window Rock communities, the Navajo Nation Bar Association, the Window Rock and Chinle District Courts, and the Navajo Police. About half of the clients are referred by the courts and the others by law enforcement agencies.

FUNDING: The program is funded by a Federal agency, the National Center on Child Abuse and Neglect.

CP-03422
UTE MOUNTAIN-UTE TRIBE GUARDIAN AD LITEM PROJECT
Raezek, L.T.
Ute Mountain-Ute Tribe Guardian Ad Litem Project, Towaoc, Colorado
Towaoc, CO 81334

SERVICES: Services provided by the program include representation of tribal children in abuse and neglect proceedings; improvement and utilization of the tribal court system and community resources to prevent disintegration of the tribe through off-reservation long-term foster care placements; public education and parenting groups tailored to the Ute culture and language; and training the Ute paralegal to serve as Guardians Ad Litem to children involved in abuse and neglect proceedings. The primary purpose is to serve as a demonstration model.

CLIENTELE: The Ute tribe is served by the program.

STAFFING: The program is staffed by a tribal Guardian Ad Litem attorney; a Ute interpreter-paralegal, and a Ute secretary-office manager.

ORGANIZATION: The program is administered by a private organization.

FUNDING: The program is supported by Federal funds.

Family Support Services

Social support services are vital to families in crisis. Such services may include parental self-help groups, crisis nurseries, and specialized counseling for families experiencing the double stress of child and alcohol/substance abuse. Examples of programs providing these services to Native American families are shown below:

CP-03427
PARENT SUPPORT NETWORK FOR URBAN NATIVE AMERICAN FAMILIES
Keal, M.R.
Parents Anonymous of Arizona, Phoenix
2509 East Fillmore Street; Phoenix, AZ 85008

SERVICES: The purpose of the program is to provide comprehensive child abuse and neglect prevention services to Indian families by utilizing Indian Parents Anonymous groups and parent aides. The program attempts to link families with already existing child abuse prevention services that are not being utilized by the Indian population.

CLIENTELE: The program serves Native American families of Maricopa county.

ORGANIZATION: The program is administered by a private, nonprofit organization.

FUNDING: The program is supported by Federal funds and contributions from private organizations.

CP-03426
NORTHLAND CRISIS NURSERY
Thompson, D.
Northland Crisis Nursery, Flagstaff, Arizona
2304 North 3rd Street; Flagstaff, AZ 86001

SERVICES: The program focuses on prevention of child abuse, primarily with children housed in the nursery. Services provided include parenting education on feelings management, behavior management, problem-solving, no-choice limits, and no-fault communication.

CLIENTELE: The program serves Coconino, Navajo, Apache, Yavapai, and Mohave counties as well as Navajos and Hopis from their reservations.

ORGANIZATION: The program is administered by a private organization.

FUNDING: The program is supported by funds from private organizations and individuals.

CP-03170
WOMEN'S SUPPORT CENTER
Stone, C.; Craig, G.
Native American Rehabilitation Association, Portland, Oregon
3129 SE. Hawthorne Street; Portland, OR 97214
December 1980.

SERVICES: The purpose of a portion of the program is to provide supportive services in a nurturing environment to children who have been abused or neglected by alcoholic mothers. Direct services to parents include alcohol and drug counseling, couples and family counseling, group and individual therapy, legal assistance, residential care, child management classes, transportation, physical therapy, and recreational activities. Direct services to children include individual therapy, as well as co-alcoholic counseling for adolescents. Indirect services include referral, training, and technical assistance. Less than 25 percent of the services, in the form of medical examinations and training, are purchased from other programs.

CLIENTELE: The program provides services to male and female children, female parents, and families living thoughout the nation. Indirect services are provided by professional groups, staff of alcohol treatment programs, and Indian service organizations.

STAFFING: The program employs a part-time clerk and a full-time staff that consists of a treatment supervisor, alcoholism counselor, group worker, child care workers, and three residential care facility aides.

ORGANIZATION: The program is administered by a private, nonprofit alcoholism treatment organization and is under the supervision of the Indian Health Service. The program is evaluated via a Functional Analysis Systems Technique (FAST) used internally by the Board of Directors and submitted to funding agencies via a Client Progress Monitoring System (CPMS), which is the State evaluation system; the former evaluation process is administered by the Data Coordinator of the Native Rehabilitation Association, while the latter process is administered by the State Alcohol and Drug Office.

COORDINATION: The program is a member of the Burnside Consortium, which coordinates referrals and makes other agencies aware of program services. Cases are referred to the program by private and public social service agencies, law enforcement agencies, courts, family members, self-referrals, and the area detoxification unit. Cases are referred by the program to private, nonprofit organizations and State agencies.

FUNDING: Most of the program income comes from direct Federal funds; the remainder from State funds, State-administered Federal funds, funds from private, nonprofit organizations, and fees from clients, who pay on a sliding scale for residential services.

CHAPTER VII

CONCLUSION: FOR FURTHER INFORMATION

The past 2 decades have seen much change in social and political attitudes and policies in regard to both topics of this Report; child maltreatment and Native Americans. Federal laws and policies have directly impacted upon both the problem of child maltreatment and the rights of Native Americans, especially the right of self-determination. This impact may be seen in legislative change, whether in State child abuse laws or in the development and revision of tribal children's codes. Public and private programs have developed to put into practice the policies that have resulted in response to concerns for the future of Native American communities, the children.

But much more is being done and needs to be done to effectively address the concerns for the next generation of Native Americans. To assist those interested in further information, additional resources are provided below:

Organizations of Note

American Indian Law Center
P.O. Box 4456 - Station A
Albuquerque, NM 87196
Nancy Tuthill, Director
Telephone: (505) 277-5462

American Indian Lawyer Training Program
319 MacArthur Boulevard
Oakland, CA 94610

National Indian Law Library
1506 Broadway
Boulder, CO 30302

TCI, Incorporated (publishes Linkages)
3410 Garfield Street, NW.
Washington, DC 20007
Nancy Gale, Editor
Louise Zokan Delos Reyes, Project Officer
Dr. Thomas C. Clary, Project Director

Resource Directories

Child Abuse and Neglect Resource Directory: An Information Guide for Indian Tribes, Other Indian Groups, and Indian Serving Organizations. Office of Human Development (DHEW), Washington, DC, (OHD) 77-31099, October 1976, pp. 19.

This directory is designed as an information guide for Indian and Indian-serving groups, and describes sources of technical assistance in the area of child abuse and neglect. A brief description of each of the 16 demonstration resource projects funded by the National Center on Child

Abuse and Neglect is presented, along with the name, address, and telephone number of the director of each. Similar data are provided for the Federal child abuse and neglect specialists in each of the HEW regions and in the Indian and Migrant Programs Division. Seven demonstration child abuse and neglect projects with a specific focus on services to Indian children and their families are listed, along with a brief description of the program and the name of the director. Various books, reports, and other publications dealing with Indian child welfare are also briefly described, along with details of how to obtain them. (CD-02423)

Indian Child Welfare Act: Information Resource Directory 1980. Arizona State Department of Economic Security, Phoenix, June 1980, pp. 68.

Procedures presently being followed in notification and transfer of children in Arizona under the Indian Child Welfare Act (ICWA) are described. The ICWA (Public Law 95-608) was enacted by Congress in 1978 to promote the stability and security of Indian tribes and families. The act attempts to accomplish this by preventing unwarranted removal of Indian children from their homes; by mandating recognition of the authority of tribal courts; and by establishing standards for the placement of Indian children in foster or adoptive homes. Arizona tribal affiliations and reservations are described. State processes and procedures for notification and transfer of ICWA cases are outlined. A directory of State and tribal judicial offices and a discussion of definitions of child abuse and parental roles and responsibilities among the Navajo are appended. (CD-06625)

National Resource Centers for Child Welfare Services

These Resource Centers, funded by the Administration for Children, Youth and Families (HHS), specialize in information collection and dissemination, technical assistance and training, and network development for each of their topic areas. As national centers under Federal auspices, they are reference sources for Native American concerns in their areas.

National Resource Center for Family Based Services

Janet R. Hutchinson, Director
School of Social Work
University of Iowa
N-240A Oakdale Hall
Iowa City, IA 52242
(319) 353-5076

National Resource Center for Foster and Residential Care

Ronald K. Green, Director
Child Welfare Institute
P.O. Box 77364
Station C
Atlanta, GA 30357
(404) 876-1934

National Legal Resource Center for Child Welfare Services

Robert Horowitz, Director
American Bar Association
1800 M Street, NW., Suite S-200
Washington, DC 20036
(202) 331-2250

National Resource Center for Child Welfare Program Management and Administration

Stephen P. Simonds, Director
Human Services Development Institute
University of Southern Maine
246 Deering Avenue
Portland, ME 04102
(207) 780-4430

National Resource Center for Youth Services

James M. Walker, Director
University of Oklahoma
440 South Houston, Suite 751
Tulsa, OK 74127
(918) 581-2986

National Resource Center for Special Needs Adoption: Spaulding-Michigan

Dr. Jane Swanson, Director
Spaulding for Children
3660 Waltrous Road
P.O. Box 337
Chelsea, MI 48118
(313) 475-8693

National Resource Center on Child Welfare Services to Developmentally Disabled Children

Dr. Mary Richardson, Director
University of Washington, Clinical Training Unit
Child Development and Mental Retardation Center
Seattle, WA 98195
(206) 545-1350

National Child Abuse Clinical Resource Center

Dr. Richard Krugman, Director
Kempe Center
University of Colorado
Health Sciences Center
1205 Oneida Street
Denver, CO 80220
(303) 321-3962

National Resource Center for Child Abuse and Neglect

Patricia Schene, Director
American Humane Association
American Association for Protecting Children
9725 East Hampden Avenue
Denver, CO 80231
(303) 695-0811

Tribal Court Systems Profiled

As noted in Chapter II, Native American Tribal Court Profiles, compiled in 1982 by the National American Indian Court Judges Association, is a valuable source of specific information on tribal courts, including tribal organization names and addresses. The tribes profiled in this handbook are:

Absentee-Shawnee Tribe (Oklahoma)
Ak-Chin Indian Community (Arizona)
Apache Tribe (Oklahoma)
Assiniboine and Sioux Tribes-Fort Peck (Montana)
Bay Mills Indian Community (Michigan)
Blackfeet Tribe (Montana)
Burns Paiute Indian Colony (Oregon)
Caddo Indian Tribe (Oklahoma)
Cheyenne-Arapaho Tribes (Oklahoma)
Cheyenne River Sioux Tribe (South Dakota)
Chippewa Cree Indians-Rocky Boy's (Montana)
Citizen Band of Potawatomi Indians (Oklahoma)
Cocopah Tribe (Arizona)
Coeur D'Alene Tribe (Idaho)
Colorado River Indian Tribes (Arizona/California)
Comanche Indian Tribe (Oklahoma)
Confederated Salish and Kootenai Tribes - Flathead (Montana)
Confederated Tribes-Chehalis (Washington)
Confederated Tribes-Colville (Washington)
Confederated Tribes-Umatilla (Oregon)
Confederated Tribes-Warm Springs (Oregon)
Crow Creek Sioux Tribe (South Dakota)
Crow Tribe (Montana)
Delaware Tribe (Oklahoma)
Devils Lake Sioux Tribe-Fort Totten (North Dakota)
Eastern Band of Cherokee Indians (North Carolina)
Flandreau Santee Sioux Tribe (South Dakota)
Fort Belknap Indian Community (Montana)
Fort McDermitt Paiute and Shoshone Tribe (Nevada/Oregon)
Fort Mojave Indian Tribe (Arizona/California/Nevada)
Fort Sill Apache Tribe (Oklahoma)
Gila River Indian Community (Arizona)
Hannahville Indian Community (Michigan)
Havasupai Tribe (Arizona)
Hoh Indian Tribe (Washington)
Hoopa Valley Indian Reservation (California)
Hopi Tribe (Arizona)
Hualapai Tribe (Arizona)

Iowa Tribe (Oklahoma)
Jicarilla Apache Tribe (New Mexico)
Kaibab Band of Paiute Indians (Arizona)
Kalispel Indian Community (Washington)
Kaw Tribe (Oklahoma)
Keweenaw Bay Indian Community (Michigan)
Kickappo Tribe (Oklahoma)
Kiowa Indian Tribe (Oklahoma)
Kootenai Tribe (Idaho)
Lac Courte Oreilles-Lake Superior Chippewa Indians (Wisconsin)
Las Vegas Tribe of Paiute Indians (Nevada)
Lovelock Paiute Tribe (Nevada)
Lower Brule Sioux Tribe (South Dakota)
Lower Elwha Tribal Community (Washington)
Lummi Tribe (Washington)
Makah Indian Tribe (Washington)
Menominee Indian Tribe (Wisconsin)
Mescalero Apache Tribe (New Mexico)
Metlakatla Indian Community (Alaska)
Minnesota Chippewa Tribe-Nett Lake (Minnesota)
Mississippi Band of Choctaw Indians (Mississippi)
Moapa Band of Paiute Indians (Nevada)
Muckleshoot Indian Tribe (Washington)
Navajo Tribe (Arizona/New Mexico/Utah)
Nisqually Indian Community (Washington)
Nooksack Indian Tribe (Washington)
Northern Cheyenne Tribe (Montana)
Oglala Sioux Tribe (South Dakota)
Omaha Tribe (Nebraska)
Otoe-Missouri Tribes (Oklahoma)
Paiute Shoshone Tribe-Fallon (Nevada)
Papago Tribe (Arizona)
Passamaquoddy Tribes (Maine)
Pawnee Indians (Oklahoma)
Penobscot Nation (Maine)
Ponca Tribe of Indians (Oklahoma)
Port Gamble Indian Community (Washington)
Pueblo of Acoma (New Mexico)
Pueblo of Cochiti (New Mexico)
Pueblo of Isleta (New Mexico)
Pueblo of Jemez (New Mexico)
Pueblo of Laguna (New Mexico)
Pueblo of Nambe (New Mexico)
Pueblo of Picuris (New Mexico)
Pueblo of Pojoaque (New Mexico)
Pueblo of Sandia (New Mexico)
Pueblo of San Felipe (New Mexico)
Pueblo of San Ildefonso (New Mexico)
Pueblo of San Juan (New Mexico)
Pueblo of Santa Ana (New Mexico)
Pueblo of Santa Clara (New Mexico)
Pueblo of Santo Domingo (New Mexico)
Pueblo of Taos (New Mexico)

Pueblo of Tesuque (New Mexico)
Peublo of Zia (New Mexico)
Puyallup Tribe (Washington)
Pyramid Lake Paiute Tribe (Nevada)
Quileute Tribe (Washington)
Quinault Indian Nation (Washington)
Red Cliff Band of Lake Superior Chippewa Indians (Wisconsin)
Red Lake Band of Chippewa Indians (Minnesota)
Reno Sparks Indian Colony (Nevada)
Rosebud Sioux Tribe (South Dakota)
Sac and Fox Tribe of Indians (Oklahoma)
Saginaw Chippewa Indian Tribe-Isabella (Michigan)
Salt River Pima-Maricopa Indian Community (Arizona)
San Carlos Apache Tribe (Arizona)
Sauk Suiattle Indian Tribe (Washington)
Seneca Nation of Indians (New York)
Shoalwater Bay Indian Tribe (Washington)
Shoshone and Arapaho Tribe-Wind River (Wyoming)
Shoshone-Bannock Tribes-Fort Hall (Idaho)
Shoshone-Paiute Tribes-Duck Valley (Nevada/Idaho)
Sisseton Wahpeton Sioux Tribe (South Dakota)
Skokomish Indian Tribe (Washington)
Southern Ute Tribe (Colorado)
Spokane Tribe (Washington)
Squaxin Island Tribe (Washington)
Standing Rock Sioux Tribe (North Dakota)
Suquamish Tribe-Port Madison (Washington)
Swinomish Tribe (Washington)
Te-Moak Bands of Western Shoshone Indians (Nevada)
Three Affiliated Tribes-Fort Berthold (North Dakota)
Tonkawa Tribe (Oklahoma)
Tulalip Tribe (Washington)
Turtle Mountain Band of Chippewa Indians (North Dakota)
Upper Skagit Indian Tribe (Washington)
Ute Indian Tribe-Uintah and Ouray (Utah)
Ute Mountain Ute Tribe (Colorado)
Walker River Paiute Tribe (Nevada)
Washoe Tribe (Nevada)
White Mountain Apache Tribe (Arizona)
Wichita Indian Tribe (Oklahoma)
Winnebago Tribe (Nebraska)
Winnemucca Indian Colony (Nevada)
Yakima Indian Nation (Washington)
Yankton Sioux Tribe (South Dakota)
Yavapai-Apache Indian Community-Camp Verde (Arizona)
Yavapai-Prescott Indian Tribe (Arizona)
Yerington Paiute Tribe (Nevada)
Yomba Shoshone Tribe (Nevada)
Zuni Tribe (New Mexico)